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In the Supreme Court of the United States.

EX PARTE

GARNETT, STUBBS & CO., ET AL., IN CASE OF

JOHN LAWTON,
OWNER OF THE STEAMER
"KATIE,"
vs.
THE STEAMER KATIE, ETC.
AND
GARNETT, STUBBS & CO.,
ET AL.

Libel in the United States District Court for the Southern District of Georgia, E. D.

Motion for Leave to File a Petition for a

WRIT OF PROHIBITION,

with Petition Attached.

Saml B. Adams

DENMARK, ADAMS & ADAMS.
THOMAS M. NORWOOD,
Attorneys for Petitioners.

GEO. N. NICHOLS, PRINTER, SAVANNAH, GA.

LAW ASSOCIATION
—OF—
PHILADELPHIA.

IN THE SUPREME COURT OF THE UNITED STATES.

Ex Parte

GARNETT, STUBBS & CO., ET AL.,

PETITION FOR LEAVE TO FILE A PETITION FOR A

WRIT OF PROHIBITION,

IN THE ADMIRALTY CAUSE OF

JOHN LAWTON,
OWNER OF STEAMER "KATIE,"
vs.
THE STEAMER KATIE, ETC., AND
GARNETT, STUBBS & CO., ET AL.

Libel in United States District Court for the Southern District of Georgia, Eastern Division.

MOTION FOR LEAVE TO FILE A PETITION FOR THE WRIT OF PROHIBITION.

And now come John K. Garnett, Thomas F. Stubbs and William S. Tison, copartners composing the firm of Garnett, Stubbs & Co., C. L. Montague, J. R. Sheldon, C. H. Wilcox and A. J. Ives, copartners composing the firm of C. L. Montague & Co., Francis M. Farley, Eldridge G. Cabaniss, the surviving member of the firm of Geo. Walter & Co., Geo. J. Baldwin and John H. Hunter, copartners composing the firm of Baldwin & Co., Chas. R. Herron and James J. Gaudry, copartners composing the firm of Herron & Gaudry, Hugh M. Comer and Edward T. Comer, copartners composing the firm of H. M. Comer & Co., M. Young MacIntyre and Daniel I. MacIntyre, copartners composing the firm of M. Y. & D. I. MacIntyre, John

Flannery and John L. Johnson, copartners composing the firm of John Flannery & Co., and Josiah L. Warren and Randolph Axson, copartners composing the firm of Warren & Axson, by their counsel, and move this Honorable Court for leave to file the annexed petition for a Writ of Prohibition to be directed to the Honorable the Judge of the United States District Court for the Southern District of Georgia, Eastern Division.

Sand B. Adams.

DENMARK, ADAMS & ADAMS,
THOMAS M. NORWOOD,
Counsel for Petitioners.

IN THE SUPREME COURT OF THE UNITED STATES.

JOHN LAWTON,
OWNER OF THE STEAMER "KATIE,"
vs.
THE STEAMER KATIE, ETC., AND
GARNETT, STUBBS & CO., ET AL.

Libel in United States District Court for the Southern District of Georgia, Eastern Division.

PETITION BY GARNETT, STUBBS & CO., ET AL.,
FOR A WRIT OF PROHIBITION.

To the Honorable The Supreme Court of the United States:

The petition of John K. Garnett, Thomas F. Stubbs and William S. Tison, as copartners composing the firm of Garnett, Stubbs & Co., C. L. Montague, J. R. Sheldon, C. H. Wilcox and A. J. Ives, as copartners composing the firm of C. L. Montague & Co., Francis M. Farley, Eldridge G. Cabaniss, as surviving copartner of the late firm of George Walter & Co., George J. Baldwin and John H. Hunter, as copartners under the firm name of Baldwin & Co., Charles R. Herron and James J. Gaudry, as copartners under the firm name of Herron & Gaudry, Hugh M. Comer and Edward T. Comer, as copartners under the firm name of H. M. Comer & Co., M. Young MacIntyre and Daniel I. MacIntyre, as copartners under the firm name of M. Y. & D. I. MacIntyre, John Flannery and John L. Johnson, as copartners under the firm name of John Flannery & Co., Josiah L. Warren and Randolph Axson, as copartners under the firm name of Warren & Axson, respectfully showeth:

First—That your petitioners are all cotton factors and commision merchants, residing and doing business in the City of Savannah, in the Eastern Division, Southern District, of Georgia, and are citizens of the said City of Savannah and State of Georgia.

Second—That your petitioners were the consignees of all the cotton constituting the cargo of the Steamboat Katie (except ten bales) on her voyage from Augusta, Georgia, and intermediate landings, to Savannah, Georgia, said cotton having been shipped to your petitioners at Savannah, from various points on the Savannah River, the said voyage beginning on the eighth day of October, A. D., eighteen hundred and eighty-seven (1887).

Third—That said Steamboat Katie was then and there engaged exclusively in inland navigation of the Savannah River, between the ports of Augusta, Georgia, and Savannah, Georgia, and intermediate ports and places on either bank of said Savannah River, was not a sea-going vessel, and that John Lawton, of the State of South Carolina, was her owner.

Fourth—That a large portion of said Cotton was not delivered to your petitioners, said Lawton claiming that the same had been destroyed by fire in transit, and that thereupon your petitioners brought actions at law against the said Lawton, as the owner of the said "Katie," to recover the value of the said cotton, as follows: Said Garnett, Stubbs & Co., for the sum of nine thousand one hundred and eight dollars and sixteen cents ($9,108.16), besides interest from October 12th, 1887, the value of two hundred and five (205) bales of cotton, in the City Court of Savannah, a State Court of the said State of Georgia, in the said City of Savannah, on January 10th, 1888. Said C. L. Montague & Co., for the sum of two thousand three hundred and fifty-six dollars and sixty-two cents ($2,356.62), besides interest from October 12th, 1887, the value of forty-eight (48) bales of cotton and damage to eight

(8) bales, in said City Court of Savannah on said January 10th, 1888. F. M. Farley, for the sum of two hundred and eighty-two dollars and eighty-nine cents ($282.89), besides interest from October 12th, 1887, the value of six (6) bales of cotton and damage to one bale, in said City Court of Savannah, on said January 10th. Said George Walter & Co., for the sum of two hundred and thirty-four dollars and ten cents ($234.10), with interest from October 12th, 1887, the value of five (5) bales of cotton and six (6) sacks of cotton seed, in said City Court on said January 10th. Said Baldwin & Co., for the sum of two hundred and sixty-four dollars and sixty-four cents ($264.64), besides interest as aforesaid, the value of four (4) bales and damage to five (5) bales of cotton, in said City Court of Savannah on said January 10th. Said Herron & Gaudry, for the sum of two thousand and thirty-one dollars and thirty-two cents, with interest as aforesaid, in said City Court, on said January 10th. Said H. M. Comer & Co., for the sum of eight hundred and eight dollars and seventy-one cents ($808.71). Said M. Y. & D. I. MacIntyre, for the sum of five hundred and fifty-five dollars and sixty-two cents—the two last being attachments returnable to the February Term, 1888, of said City Court, the attachment of Comer & Co., having been sued out on the 17th of December, 1887, and the attachment of M. Y. & D. I. MacIntyre on the 10th of January, 1888. Said John Flannery & Co., and said Warren & Axson brought suits in Justice Russell's Court, in said City of Savannah, on said January 10th, 1888, said Flannery & Co., for the sum of forty eight ($48) dollars, besides interest, said Warren & Axson, for the sum of forty-five dollars ($45), besides interest. In all of the said suits, save only the two attachments, personal service was made upon the said Lawton in the City of Savannah, and within the jurisdiction of the said City Court, all of which will more fully appear by reference to the said Libel, a true and correct copy of which is hereto annexed.

Fifth—That afterwards, to-wit, on the 25th of January, 1888, said John Lawton filed a Libel in the District Court of the United States for the Southern District, Eastern Division, of Georgia, invoking its admiralty jurisdiction, before the Honorable Emory Speer, Judge of said Court, alleging that the amount sued for in said cases, and the loss and damage happening by means of or by reason of said fire, exceeded the value of said Steamboat and her freight on said voyage, and that said fire was not caused by any negligence of said Libellant or of the Master and crew of said Steamboat, and that under the Act of Congress, approved March 3d, 1851, as amended by the Act of Congress, approved June 19th, 1886, said Libellant was not in any wise liable for said loss or damage, and claiming further, in the event of any liability, the benefit of the limitation provided in the third and fourth sections of said Act of March 3d, 1851, a copy of said Libel and its "Exhibits" being hereunto annexed.

Sixth—That afterwards, to-wit, on the 8th day of March, 1888, an appraisment of said Steamboat and freight was had, said Steamboat being appraised at $3,300 and the freight at $196.75, making a total of $3,496.75, for which said sum the said John Lawton entered into the usual stipulation on May 4th, 1889.

Seventh—That afterwards, to-wit, on April 9th, 1888, your petitioners objected to said District Court taking further cognizance of said case, and moved to dismiss said Libel upon the grounds that said Court was without any jurisdiction in the premises, and that the fourth section of said Act of Congress, approved June 19th, 1886, upon which section said Libel is based, is unconstitutional, null and void; that, afterwards, to-wit, on February 9th, 1889, said District Court overruled said motion, and determined to proceed with the further cognizance of said cause, and that the said Libel and the action of the Court in the premises stay the hearing of the said suits of your petitioners now pending in the State Courts.

Eighth—That said Steamboat Katie was then and there used only on the Savannah River, was not a sea-going vessel, and was engaged only in inland navigation, and that said Libel was based entirely upon the Act of Congress, approved June 19th, 1886, and upon the fourth section thereof.

Ninth—That said fourth section of said Act is unconstitutional, null and void, in that Congress is without the power to pass an Act limiting the liability of ship owners and the rights of their patrons as to "all vessels used on lakes or rivers, or in inland navigation," without regard to the character of the commerce carried on.

Tenth—That it will appear by reference to the said Exhibits of said Libel that the greater part of said cotton was shipped by Georgia Consignors, from divers points or places within the State of Georgia, to be transported to Savannah, Georgia, to Consignees, then and there residents and citizens of the said City of Savannah, and was the subject of a commerce strictly internal. That while petitioners deny the power of Congress to pass any Act to affect the Consignors and Consignees of such Georgia cotton, yet even if it be conceded that this power resides in Congress, petitioners submit that it has never been effectually exercised, the only attempt to exercise Congressional power upon the subject being found in said Act of June 19th, 1886, which petitioners submit is clearly unconstitutional.

Wherefore your petitioners pray remedy by a Writ of Prohibition to be issued out of this Honorable Court to the said Judge of the said District Court of the United States in and for the said Eastern Division of the said Southern District of Georgia, to be directed to prohibit him from taking any further cognizance of said cause, or of exercising any jurisdict

DENMARK, ADAMS &

THOS. M. NORWOOD,

Attorneys for P

GEORGIA,
CHATHAM COUNTY,
CITY OF SAVANNAH.

Personally came Samuel B. Adams, a member of the above named law firm of Denmark, Adams & Adams, who on oath deposes and says that the Libel hereto attached, with its Exhibits is that served upon the Attorneys of the above named petitioners by the Proctors of the Libellant, John Lawton, as a correct copy of the original Libel and its Exhibits; that the same is a correct copy, and the allegations of fact, in the foregoing petition are true, to the best of deponent's knowledge, information and belief.

SAMUEL B. ADAMS.

Sworn to and subscribed before me, this 6th day of May, 1890.
T. M. CUNNINGHAM, JR.,
Notary Public, Chatham Co., Ga.

COPY OF THE LIBEL AND ITS EXHIBITS.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA—EASTERN DIVISION.

To the Hon. Emory Speer, Judge of the District Court of the United States for the Southern District of Georgia, Eastern Division:

The Libel of John Lawton, of South Carolina, alleges and propounds, as follows:

First—That he is, and was, on the dates hereinafter set forth, the owner of the Steamboat Katie, her tackle, apparel, boilers, engines and furniture; that the said vessel is and was, on the dates hereinafter stated, an enrolled vessel of the United States, duly licensed to carry on the coasting trade; that said Steamboat Katie for more than 20 years last past has been continuously engaged in transporting merchandise, goods, wares

and other commodities from and to the ports of Savannah and Augusta, and intermediate ports and landings on the Savannah River, in the States of South Carolina and Georgia, and that certain of the goods, wares, merchandise and other [illegible] ported by the said Steamboat as one of through lines of carriers, issuing through bills of lading, to and from ports and places within the State of Georgia, and ports and places in other States of the United States, and foreign countries.

Second—That on the 8th day of October, 1857, the said Steamboat Katie left the port of Augusta on a voyage to the port of Savannah, intending to stop at intermediate ports and places on the said River Savannah, within the States of South Carolina and Georgia, to load a cargo to consist chiefly of cotton; that said Steamboat Katie was well and efficiently manned and thoroughly equipped; that the said Steamboat and her tackle, apparel, engines, boilers and furniture were in good order, and in every way suitable and prepared to enable said vessel to accomplish said voyage with safety and dispatch; that on the tenth day of October, about twenty minutes after four in the afternoon, said vessel left a landing on the Savannah River called Burton's Ferry, and proceeded on her voyage; that she had on board about 643 bales of cotton; that after having gone a short distance below Burton's Ferry landing, said Steamboat struck on a sand bar, and notwithstanding the endeavors of her master and crew to get her off, she remained there until October 12th, about three o'clock in the afternoon, when fire was discovered in the cotton near the bow of the Steamboat; that strenuous efforts were made to extinguish the fire, which spread with very great rapidity; that some of the bales of cotton were thrown overboard to prevent, as far as possible, the fire from spreading, and to save the rest of the cargo and the boat; that after about three hours of the very hardest and most hazardous

work, the master and crew of the Steamboat succeeded in clearing the bow of the burning cotton, and eventually saved the vessel and a portion of the cargo; that the decks of the boat were badly burned, and she was otherwise damaged; that on October 13th, the Steamboat floated off the bar, and leaving the mate and a part of the crew to continue the work of extinguishing the fire which was still burning, in certain of the bales which had been jettisoned, and to gather up all the cotton which had been so jettisoned which could be saved, said Steamboat proceeded to Savannah, where she arrived on the evening of the 14th, without further casualty.

Third—Libellant attaches to this Libel, as a part thereof, marked Exhibit A, a list of the cargo received by said Steamboat, on said voyage, from landings on the Georgia side of the Savannah River, showing the landings from which the cargo was received, the articles received, their marks, the articles delivered, and the order in which the same were delivered; and he also so attaches, as Exhibit B, a list showing the cargo received from the landings on the South Carolina side of the river, and showing the same particulars, which are shown in the list of cargo received from the Georgia landings.

Fourth—That all of the consignees whose cotton was either lost or damaged on said voyage, except W. W. Gordon & Co., have brought suits against Libellant for value of the cotton and other articles so lost and damaged; and Libellant attaches to this Libel, as Exhibit C, a statement of the suits so brought, showing by whom they are brought, the Courts to which the same are returnable, the amounts sued for, the dates when suits were commenced, and the nature of the suits. Libellant shows that in the two attachment cases he was obliged to give bonds in double the amount sued for, conditioned to pay the plaintiffs the amount of the judgments that might be recovered in

said attachment cases; and that if he had not given such bonds the "Katie" would have remained in the hands of the officers who levied the attachments. That the amounts sued for in said cases and the loss and damage happening by means of or by reason of said fire, exceed the value of said Steamboat and her freight on said voyage. That said fire was not caused by any negligence of Libellant, or of the master and crew of said Steamboat, and that by reason of the exception against fire contained in the bills of lading or receipts (as hereinafter set forth in Article Fifth), Libellant is not liable for the loss and damage caused by reason of or by means of said fire; that said receipts or bills of lading are in the form which has been in use for years on the River Savannah; and that there is a custom which has existed on said river for many years, for shippers to take bills of lading or receipts in said form for cotton shipped.

Fifth—That all of the cotton, and other articles, received by said Steamboat on said voyage was receipted for to the shippers thereof by agents of the Libellant's said vessel; the receipts so given each specifying the landing from which the cotton was received, the number and marks of the bales, and the consignees, and concluded in these words, "dangers of navigation, fire, enemies and acts of God excepted," and Libellant attaches hereto, as a part of this Libel, marked Exhibit D, one of said forms of receipts or bills of lading.

Sixth—That Libellant does not know the cause of the fire, nor has he any information which would enable him to determine exactly the cause thereof; that he was not on board the "Katie" during any part of said voyage; that all the loss, destruction and damage to the bales of cotton happened by reason of or by means of said fire, and that said fire was not caused by the design or neglect of the Libellant.

Seventh—That said loss and damage was solely caused by reason of or by means of said fire, without the privity or the knowledge of the Libellant.

Eighth—That the Savannah River, between Savannah and Augusta, is a navigable stream, lying partly within the State of Georgia and partly within the State of South Carolina; that the contracts entered into between the shippers of said cotton on said voyage and Libellant for the carriage of the cotton are maritime.

Ninth—Libellant contests his liability for the loss and damage which happened by reason of, or by means of, said fire, on the grounds that the Act of Congress, approved March 3d, 1851, as amended by the Act of Congress, approved June 19th, 1886, exempts him from liability in the premises, and that under the bills of lading or receipts issued for the said cotton, he is released from all loss and damage resulting from the fire; but while so contesting his liability, if it should be adjudged that Libellant is in any way liable for said loss or damage, or any part thereof, he claims the benefit of the limitation of liability provided for in the third and fourth sections of said Act of March 3d, 1851.

Tenth—That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, the Libellant prays that due appraisement may be made of the value of the interest of Libellant in the said Steamboat Katie, her tackle, apparel, boilers, engines, furniture, and the freight for the said voyage, according to the Statutes and the Rules of Court in such case made and provided. (Libellant hereby offering to give a stipulation, with sureties, for payment thereof into Court whenever the same shall be ordered). That monition may issue against all persons claiming damages for the loss, damage and injury set forth in the foregoing Libel, to appear before this Court, and make due proof of their respective claims at or before a certain time to be named in said writ not less than three months from the issuing of the same, and that public notice of such

monition shall be given as in other cases, and such further notice served through the proctors, or otherwise, as this Honorable Court in its discretion may direct. That Libellant may be adjudged not to be liable or responsible for the loss and damage happening by reason of or by means of said fire; but if it should be adjudged that Libellant is liable for any loss or damage happening by reason of or by means of such fire, that his liability may be limited, as provided in the third and fourth sections of said Act of March 3d, 1851, to the value of Libellant's interest in said vessel and her freight then pending; that Libellant may have such other and further relief as the nature of his case requires, and that such further proceedings may be had in this cause as are conformable with the practice of this Honorable Court in such cases.

Sworn to this January 25, 1888, before me.
MARION ERWIN,
Clerk U. S. Court.

JOHN LAWTON,

CHISHOLM & ERWIN,
Proctors for Libellant.

EXHIBIT "A."

GEORGIA LANDINGS.

WAY LIST STEAMER KATIE, No. 14, FROM AUGUSTA TO SAVANNAH, OCTOBER 14, 1887.

GEORGIA LANDINGS.	MARKS.	ARTICLES	CONSIGNEES.	No. B. C. DELIVERED	No. B. C. DELIV'ED IN GOOD ORDER, &C.
Griffin's	EJC	13 B. C.	Garnett, Stubbs & Co	None	None
"	C&M	4 "	" "	"	"
"	C&H	3 "	" "	"	"
"	C&D	1 "	" "	"	"
"	JC&C	1 "	" "	"	"
"	SE&H	1 "	" "	"	"
"	SS&C	1 "	" "	"	"
"	AY&R	2 "	" "	"	"
"	SB&R	1 "	" "	"	"
"	AH&R	1 "	" "	"	"
"	ME&R	1 "	" "	"	"
Buxton's	JMG	1 "	" "	"	"
"	J&W	2 "	" "	"	"
"	JG	2 "	" "	"	"
"	CWS	1 "	" "	"	"
"	SIH	3 "	" "	"	"
"	GOB	6 "	" "	"	"
Brigham's	C&JCB	17 "	" "	"	"
"	JMR	4 "	" "	"	"
"	NTB	4 "	" "	3	3
"	JBB	1 "	" "	None	None
"	JHB	1 "	" "	"	"

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Brigham's	ABW	1	"	"	"	"	"
"	EJG	2	"	"	"	"	"
"	JPL	2	"	"	"	"	"
"	CRO	2	"	"	"	1	1
"	TMB	1	"	"	"	None	None
"	WBM	4	"	"	"	"	"
"	DG	1	"	"	"	"	"
"	CBX	2	"	"	"	1	1
"	AJH	1	"	"	"	None	None
"	CROB	1	"	"	"	"	"
"	COB	1	"	"	"	"	"
"	IDB	1	"	"	"	"	"
"	JCB	2	"	"	"	"	"
"	JMT	1	"	"	"	"	"
"	SB	2	"	"	"	1	1
"	AM	1	"	"	"	None	None
Ellison's	GSO	25	"	"	"	16	"
"	RMC	1	"	"	"	1	1
"	J	1	"	"	"	1	1
"	RWM	1	"	"	"	None	None
"	TJE	1	"	"	"	1	1
"	WDD	9	"	"	"	9	8 G. O. 1 damaged.
"	LLE	3	"	"	"	2	2
"	JJD	2	"	"	"	1	1
"	WLD	2	"	"	"	2	2
"	JLD	2	"	"	"	1	1
"	WMD	1	"	"	"	1	1
"	WSD	1	"	"	"	None	None
"	HCD	3	"	"	"	1	1
Stoney Bluff	J. E. Martin	19	"	"	"	18	18
"	BJS	2	"	"	"	2	2
"	SR	1	"	"	"	None	None
Burton's Ferry	S. A. Webb. EE	4	"	"	"	1	2

GEORGIA LANDINGS.	MARKS.	ARTICLES.	CONSIGNEES.	No. B. C. Delivered	No. B. C. Deliv'ed in Good Order, &c.
Burton's Ferry	S. A. Wade. JJ	2 B. C.	Garnett, Stubbs & Co	2	2
"	WHH	2 "	" "	1	1
"	WHH W	1 "	" "	None.	None.
"	J. T. Wade.	8 "	" "	7	7
"	J. T. Wade. SC	4 "	" "	None.	None.
"	J. T. Wade. BF	9 "	" "	2	2
"	J. T. Wade. CB	2 "	" "	1	1
"	NO	6 "	" "	5	5
"	NO R	2 "	" "	1	1
"	WMB WRM	2 "	" "	None.	None.
"	SSL L	2 "	" "	2	2
"	WKH	3 "	" "	None.	None.
"	WHK SW	2 "	" "	None.	None.
"	GJ	5 "	" "	1	1
"	ABW MC	11 "	" "	3	3 damaged.
"	ABW TC	1 "	" "	"	None.
"	BBW C	2 "	" "	"	"
"	ABW R	1 "	" "	"	"
"	ABW MCO	1 "	" "	"	"
"	ABW MM	2 "	" "	2	2
Griffin	JD&R	1 "	C. L. Montague & Co	None.	None.
"	HW&R	1 "	" "	"	
"	JH	4 "	" "	"	
"	O&B	1 "	" "	"	
"	JA	1 "	" "	"	
Buxton's	HBH	3 "	" "	"	
"	RHH	2 "	" "	"	
"	M H	1 "	" "	"	
Brigham's	GMC	4 "	" "	"	
"	WX	8 "	" "	8	

Ellison's	LO	1 B. C.	C. L. Montague & Co	1	
"	BFB	3 "	" "	2	2
"	SJO	3 "	" "	1	1
"	BFE	3 "	" "	3	2 G. O. 1 damaged.
"	MEM	1 "	" "	None.	None.
Burton's Ferry	JGB	1 "	" "	"	"
Buxton's	SHB & CO	35 "	Herron & Gaudry	"	"
Cotton Tree	EWH	13 "	" "	8	5 G. O. 3 damaged.
"	WPJ	15 "	" "	10	5 G. O. 5 damaged.
Ellison's	ASG	4 "	J. "Flannery" & Co	4	2 G. O. 2 damaged.
"	WCG	2 "	" "	1	
Stoney Bluff	CP	1 "	Geo. Walter & Co	1	
Burton's Ferry	JWB	3 "	" "	None.	None.
"	MEC M	1 "	" "	"	None.
"	TDR	8 "	Baldwin & Co	5	2 G. O. 3 damaged.
"	TDR	12 "	F. M. Farley	6	4 G. O. 2 damaged.
"	OMDO	4 "	W. W. Gordon & Co	4	4
"	OMDO R	2 "	" "	None.	None.
"	JBJ	6 "	M. Y. & D. I. McIntyre	"	"
"	JHU	7 "	" "	4	2 damaged 2 G. O. 1 damaged.
"	JHU S	2 "	" "	1	None.
"	JHU M	1 "	" "	None.	"
"	JAD H	1 "	" "	3	3
Buxton	SHB & CO	3 cases eggs.	W. I. Miller	1	1
Ellison's	HCH	1 case eggs.	" "	1	1
Brigham's	C & JCB	1 case eggs.	R. H. Tatem		

EXHIBIT "B."

SOUTH CAROLINA LANDINGS.

WAY LIST STEAMER KATIE, NO. 14, FROM AUGUSTA TO SAVANNAH, OCTOBER 14, 1887.

S. CAROLINA LAND'GS.	MARKS.	ARTICLES	CONSIGNEE	No. B. C. DELIVERED.	No. B. C. DELIV'ED IN GOOD ORDER, &C.
Silver Bluff	PFH	14 B. C.	H. M. Comer & Co	14	14
Steel Creek	CLH	2 "	" "	2	2
"	H	2 "	" "	2	2
"	H & R	7 "	" "	6	6
"	PJH	9 "	" "	9	9
Johnson's	DS S	27 "	" "	16	15 G. O. 1 damaged
"	S & D S	2 "	" "	2	1 G. O. 1 damaged.
"	S MBS	2 "	" "	1	1 damaged.
"	S SJ	1 "	" "	None	None.
"	W V Gill	12 "	" "	9	5 G. O. 4 damaged.
Steel Creek	PMC	6 "	Garnett, Stubbs & Co		
"	PMC B	2 "	" "		
"	PMC D	2 "	" "		
"	PMS S	2 "	" "	10	10
"	C & B	2 "	" "	2	2
"	WAD	2 "	" "	1	1
"	AMM	3 "	" "	3	3
"	BF	3 "	" "	3	3
"	WRO	1 "	" "	1	1
Little Hell	GH	1 "	" "	None	None.
Brown's	J W Furse	52 "	" "	"	"
"	EEM	1 "	" "	"	"
Johnson's	JWG	2 "	" "	2	1 G. O. 1 sold at auction.

Johnson's	FH	1 "	Garnett, Stubbs & Co	1	1
"	MJ	2 "	" "	2	1 damaged. 1 G. O.
Steel Creek	IXB	7 "	C. L. Montague & Co	5	4 G. O. 1 damaged.
"	IXB A	2 "	" "	2	2
"	IXB J	2 "	" "	1	1
"	IXB S	4 "	" "	2	2
"	MS	1 "	" "	1	1
"	CB	2 "	" "	1	1
"	FFD	8 "	" "	8	8
Little Hell	CBD	8 "	" "	None.	None.
"	L W	3 "	" "	"	"
"	L G	1 "	" "	"	"
White Woman's Point	WBO	3 "	" "	3	3
" "	JSO	3 "	" "	3	2 G. O. 1 damaged.
" "	EHO	1 "	" "	1	1
" "	THJ	1 "	" "	1	1 damaged.
Johnson's	RVO	5 "	" "	4	2 G. O. 2 damaged.
"	WBO	2 "	" "	2	2
"	MLM	2 "	" "	2	2
"	BT	3 "	" "	None.	None.
"	JCW	6 "	" "	5	12 G. O. 2 damaged.
"	JCW BB	2 "	" "	2	
"	JCW AA	6 "	" "	5	
"	LJW	2 "	" "	1	1
"	TMA	2 "	" "	1	1 damaged.
Brown's	RO	1 "	Geo. Walter & Co	None.	None.
Johnson's	GAR G	1 "	W. W. Chisholm	1	1
"	GAR H	1 "	" "	1	1
"	Abram	1 "	Baldwin & Co	None.	None.
"	MMC	4 "	Warren & Axson	3	3
"	FB	4 "	" "	4	3 G. O. 1 damaged.
W. W. Point	JLO	4 "	Gordon & Co	4	2 damaged. 2 G. O.
Brown's	6 bags cotton seed.		Geo. Walter & Co	None.	None.

EXHIBIT "C."

John K. Garnett, Thomas F. Stubbs, and Wm. S. Tison, copartners, composing the firm of Garnett, Stubbs & Co., brought suit to the February Term, 1888, of the City Court of Savannah, in the Eastern Division of said Southern District of Georgia, on January 10th, 1888, for the sum of nine thousand one hundred and eight dollars and sixteen cents, besides interest from October 12th, 1887—action on the case for the alleged value of two hundred and five bales of cotton.

C. L. Montague, J. R. Sheldon, C. H. Wilcox, and A. J. Ives, copartners, composing the firm of C. L. Montague & Co., brought suit to said February Term of said City Court on January 10th, 1888, for the sum of two thousand three hundred and fifty-six dollars and sixty-two cents, besides interest from October 12th, 1887—action on the case for the alleged value of forty-eight bales of cotton, and damages to eight bales of cotton.

F. M. Farley brought suit to the February (1888) Term of the said City Court of Savannah, on January 10th, 1888, for the sum of two hundred and eighty-two dollars and eighty-nine cents, besides interest from October 12th, 1887—action on the case for the alleged value of six bales of cotton and damages to one bale of cotton.

George Walter and E. J. Cabaniss, copartners, composing the firm of George Walter & Co., brought suit to the said February Term of the said City Court of Savannah, on January 10th, 1888, for the sum of two hundred and thirty-four dollars and ten cents, besides

interest from October 12th, 1887—action on the case for the alleged value of five bales of cotton and [illegible] sacks of cotton seed.

George J. Baldwin and J. H. Hunter, copartners, composing the firm of Baldwin & Co., brought suit to said February Term of said City Court, on January 10th, 1888, for the sum of two hundred and [illegible] dollars and sixty-four cents, besides interest from October 12th, 1887—action on the case for the alleged value of four bales of cotton and damages to five bales of cotton.

Charles R. Herron and James J. Gaudry, copartners, composing the firm of Herron & Gaudry, brought suit to said February Term of said City Court, on January 10th, 1888, for the sum of two thousand and thirty-one dollars and thirty-two cents, besides interest from October 12th, 1887—action on the case for the alleged value of forty-five bales of cotton.

H. M. Comer & Co. brought suit by attachment, returnable to the February (1888) Term of said City Court of Savannah, for eight hundred and eight dollars and seventy-one cents; suit commenced by attachment for loss of and damage to cotton on said voyage of the Steamboat Katie.

M. Y. & D. I. MacIntyre brought suit by attachment, returnable to the February (1888) Term of said City Court, for five hundred and fifty-five dollars and sixty-two cents, with interest; suit commenced by attachment for loss of and damage to cotton on said

voyage of the Katie. This and the attachment of H. M. Comer & Co. were levied on the Katie; the former (i e., the attachment of Comer & Co.,) on the 13th day of December, 1887, the latter (MacIntyre) on the 10th day of January, 1888.

John Flannery & Co. brought suit to the March (1888) Term of Justice Russell's Court, in the City of Savannah, in said Southern District of Georgia (Eastern Division) for the sum of forty-eight dollars, besides interest—action on the case for loss of or damage to cotton; suit brought January 10th, 1888.

Warren & Axson brought suit to the March (1888) Term of said Justice Russell's Court, for the sum of forty-five dollars and ninety-four cents, besides interest—action on the case for loss of or damage to cotton; suit brought January 10th, 1888.

EXHIBIT "D."

STEAMER KATIE.

....185

RECEIVED from.....at

.....Landing.. ....

Bales Cotton marked..... .....

.....

.....

and consigned to.....

Dangers of Navigation, Fire, Enemies, and Acts of God excepted.

.....Purser.

FILED,
FEB 2 1891
JAMES H. McKENNEY,
CLERK

In the Supreme Court of the United States.

JOHN LAWTON,
Owner of Steamer "Katie,"
VS.
THE STEAMER "KATIE," ETC.,
AND
GARNETT, STUBBS & CO., ET AL.

Libel in the United States District Court for the Southern District of Georgia, E. D.

BRIEF

In support of the Petition of Garnett, Stubbs & Co., et al.,

FOR A WRIT OF PROHIBITION.

DENMARK, ADAMS & ADAMS,
Attorneys for Petitioners.

GEO. N. NICHOLS, GOVERNMENT, Ga.

In the Supreme Court of the United States.

JOHN LAWTON,
Owner of Steamer "Katie,"
VS.
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BRIEF

In support of the Petition of Garnett, Stubbs & Co., et al.,

FOR A WRIT OF PROHIBITION.

STATEMENT OF FACTS.

The application in this case, for the Writ of Prohibition, is based upon the contention that the libel, filed in the United States District Court for the Southern District of Georgia, Eastern Division, does not make out any case of jurisdiction in the District Court, or furnish any cause or reason for an interference with the common law actions, previously brought against the owner of the "Katie" in the State Courts. Hence, recourse must be had to the libel for a statement of the facts.

This libel sets forth that the Libellant, John Lawton, of South Carolina, was the owner of the steamboat "Katie," her tackle, etc., at the time of the happening of the loss referred to in the libel, and is still such owner; that the said vessel was, and is an enrolled vessel of the United States, duly licensed to carry on the coasting trade. That for more than twenty (20) years last past she has been continuously engaged on the Savannah River in transporting merchandise, etc., from and to the ports of Savannah and Augusta, in the State of Georgia and intermediate ports and landings on the Savannah River, in the States of South Carolina and Georgia, between Augusta and Savannah, and that goods, merchandise, etc., were transported by said Steamboat as one of a through line of carriers, issuing through bills of lading to and from ports and places within the State of Georgia and ports and places in other States of the United States and foreign countries. The libel does not state that any of the freight in the case at bar was destined for any place outside of Georgia, or was being transported by any through bill of lading, or by the "Katie" as one of a line of carriers.

The libel further alleges that on the 8th day of October, 1887, the "Katie" left Augusta on a voyage to Savannah, intending to stop at intermediate ports and places on the Savannah River, within the States of South Carolina and Georgia, to load a cargo, consisting chiefly of cotton; that the "Katie" was well and sufficiently manned and thoroughly equipped in all respects, in good order, and well and suitably prepared for the accomplishment of the voyage with safety and dispatch. That on the 10th day of October, in the afternoon, a short distance from Burton's Ferry Landing, the "Katie" with six hundred and forty-three (643) bales of cotton on board, struck a sandbar, and notwithstanding the efforts of the Master and crew to get her off, remained there until the 12th day

of the same month, when fire was discovered in the cotton near the bow of the steamer; that some of the bales of cotton were thrown overboard to prevent the spread of fire, but, notwithstanding the efforts of the Master and the crew, a large part of the cotton had to be thrown overboard, and some of the remaining was badly burned; that the Katie finally arrived at Savannah on the 14th day of October, with the balance of the cargo. The libellant attaches to the libel a list of the cargo received, showing in the exhibit the number of bales lost and saved, and the number damaged. This exhibit to the libel shows that the greater part of the cotton on board was consigned by Georgia consignors to Georgia consignees by shipments separate and distinct from the South Carolina shipments.

The libel further alleges that all of the Savannah consignees, who were factors and commission merchants, except one (who controlled only a few bales), had brought suits against Libellant, for the value of the cotton and other articles lost and damaged, in the State Courts, and Libellant attaches as an exhibit a statement of the suits brought, which exhibit is also attached to the petition for the Writ of Prohibition. It shows that the suits brought against John Lawton in the State Courts by these petitioners aggregate, exclusive of interest and costs, more than sixteen thousand dollars.

The libel also states that the loss happened without the neglect, or privity, or knowledge of the Libellant, and it appears by the Ninth Article of the libel, that Libellant bases his application to the District Court for relief against the claims made against him in the State Courts upon the Act of Congress approved March 3, 1851, *as amended by the Act of Congress, approved June 19, 1886.*

The prayer of the Libellant is that he may be adjudged not to be liable for the loss or damage happening by means or by reason of said fire, but, if he be

adjudged liable, that such liability may be limited, as provided in the third and fourth sections of the Act of March 3, 1851, to the value of Libellant's interest in said vessel and her freight then pending.

An exact copy of this Libel and of its Exhibits is attached to the verified Petition for this Writ of Prohibition, and to this verified Petition, attention is respectfully asked.

It appears also by our petition for this Writ, that the Libel was filed in the District Court on the 25th day of January, 1888; that on the 8th day of the following March an appraisement of said Steamboat and freight was had; that the Steamer was appraised at three thousand three hundred dollars ($3,300) the freight at one hundred and ninety-six dollars and seventy-five cents ($196.75), making a total of three thousand four hundred and ninety-six dollars and seventy-five cents ($3,496.75), for which sum the Libellant had entered into the usual stipulation on the 4th day of May, 1889; that on the 9th day of April, 1888, these petitioners objected to the District Court taking cognizance of said case, and moved to dismiss the Libel upon the ground that the said District Court was without any jurisdiction in the premises, in that the fourth section of said Act of Congress, approved June 19, 1886, upon which the said Libel was based, is unconstitutional, null and void; and that afterwards, to-wit: on the 9th day of February, 1889, the said District Court overruled said motion, and determined to proceed with the further cognizance of said cause. This verified petition also states that the said Libel and the action of the Court in the premises, stay the hearing of the suits of petitioners now pending in the State Courts.

The object of this application for the Writ of Prohibition is to prohibit the District Court of the United States from continuing further to take cogni-

zance of this libel, and thus prevent the trial of the suits of these petitioners in the State Court.

AS TO THE REMEDY.

We beg now to submit the following contentions:

(1) Prior to the Act of June 19, 1886, the limited liability legislation of Congress had no application to the "Katie," or its owner, or to the rights of its patrons, for two reasons: (*a*) She was used only on the Savannah River; (*b*) And only in internal navigation. See the first article of the libel, and Propeller Niagara vs. Cordes, et al, 21 How. page 26; Moore, et al. vs. American Transportation Company, 24 How. p. 37; The War Eagle, 6 Biss., 364.

The 18th Section of the Act of 1884, (mentioned in the 4th Section of 1886) need not be considered. Its title shows, what the body of it makes clear, that it was intended to apply solely to the American *Merchant Marine* and the American *Foreign* carrying trade (Vol. 23 of the U. S. Statutes at large, pages 53 to 57).

Congress understood this, and by the amendment attacked by us, undertook to widen its scope so as to embrace all ships. In the case of Sampson vs. Story, 145 Mass., 497, this Act of 1884 was construed agreeably to this view.

If the words "a ship owner" are to be construed as meaning "any ship owner," then this part of the Act of 1884 will be subject to the same objection of unconstitutionality as we shall make to the Fourth Section of the Act of 1886. It appears, however, that Libellant bases his libel upon the amendment of June 19,

1886, and not in any way upon the Act of 1884, thus taking the same position touching the Act of 1884 as that here submitted.

(2). If the legislation upon which Libellant rests his application for relief be unconstitutional, then it follows that no case is made by the Libellant for the District Court, in that the previous legislation, by the very terms of the Statute, was not to be applicable "to any vessel of any description whatsoever, used in rivers or inland navigation." This being so, a Writ of Prohibition should issue to the District Court, so as to prevent any further effort to assert jurisdiction and a further interference with the cases pending in the State Courts. On this general proposition, we refer the Court to the cases of United States vs. Peters, 3 Dall., 121, and ex parte Phœnix Insurance Company, 118 United States 610, in which the Court cites United States vs. Peters after the proposition that the "Writ of Prohibition will lie when the want of jurisdiction appears on the face of the proceedings." In the case at bar, if our contention be correct concerning the Fourth Section of the Act of 1886, then it necessarily follows that the want of jurisdiction appears on the face of this libel.

THE MAIN PROPOSITION.

This fourth section is as follows: "Section 4. That Section 4289, of the Revised Statutes, be amended so as to read as follows: 'Section 4289. The provisions of the seven preceding sections and of Section 18 of an Act entitled 'An Act to remove certain burdens on

the American Merchant Marine, and to encourage the American foreign trade, and other purposes,' approved June 26, 1884, relating to the limitations of the liability of the owners of vessels, shall apply to all seagoing vessels, *and also to all vessels used on lakes or rivers, or in inland navigation, including canal-boats, barges and lighters.*'" (Volume 24 of U. S. Statutes at Large, pages 80 and 81).

The words italicized by us are the only words relied on by Libellant to cover the facts of the case made by him, and are the words assailed by us as being unconstitutional.

(1.) Our main contention is that the words here used are none of them limited, as an Act of Congress must be, in order to be valid, even if the validity of such legislation is not confined to the commerce clause of the Constitution, and may be supported by the clause touching the admiralty and maritime jurisdiction of the Courts of the United States, and even although this Act can be regarded as simply a regulation of the vessel itself.

We must bear in mind that we are not attacking an Act of a State, where the Legislature has all the powers except those prohibited, but an Act of Congress, concerning whose powers it has been properly said in Potter's "Dwarris on Statutes and Constitutions," pages 367 and 368, "when those powers are questioned, the only duty of the Court is to see whether the grant of specific powers is broad enough to embrace the Act." To the same effect are the decisions of this Court in Martin vs. Hunter's Lessee, 1 Wheaton, 326; Trade Mark cases, 100 U. S., 93; and in Gilman vs. Philadelphia, 3 Wall, 725-6.

In the Trade Mark cases this Court, in holding that the words "any person or firm" were too broad, uses this clear and emphatic language, "When therefore Congress undertakes to enact a law which can only be valid as a regulation of commerce, it is reasonable to

expect to find on the face of the law or from its essential nature that it is a regulatron of commerce with foreign nations or among the several States, or with the Indian tribes. *If not so limited*, it is in excess of the power of Congress. If its main purpose be to establish a regulation applicable to all trade, to commerce at all points, especially if it be apparent that it is designed to govern the commerce wholly between citizens of the same State, it is obviously the exercise of a power not confided to Congress." (Italics ours.)

We fully recognize the familiar principle that a law may be constitutional in part and bad in part. Under this principle the words "sea going vessels," covering maritime commerce, may be saved because they are capable of separation from the rest of the clause, but the Courts never change, limit or restrict (which would change) the natural and obvious *meaning of words* so as to amend the statute into harmony with the fundamental law. If the words used are susceptible of two constructions, one that will harmonize the law with the Constitution and another which will bring it into hostility, the Courts will adopt the former construction. But when the words used are clear and unambiguous, and these words evince an unconstitutional exercise of power, the Courts cannot save the law. When Congress says "my will is this," expressing it, and the will, *as expressed*, is unconstitutional, the Court cannot say, "you *might have* expressed a will on this subject which would have been constitutional, and we will give your law a narrower and a different meaning from that intended by you and thus save the law." This would be legislation rather than construction. In this case, Congress might have passed a law which

would have regulated the traffic on the Savannah river between South Carolina and Georgia. (We do not admit that it could have been regulated as to the greater part of the cotton, which was shipped by Georgia consignors to Georgia consignees, Savannah being its destination. The Libel does not claim that any of the cotton was destined for ports out of the State, although it is alleged that the Katie sometimes transported cotton to Savannah, which was so destined. All of this cotton, however, was sent to Savannah—the greater part, as the Exhibit shows, by Georgia consignors on the Georgia side of the river, the shipments being distinct and seperate.) We insist that Congress has not done, within the constitutional limitations, what it might have done, even as to the South Carolina cotton, and the meaning of Congress can not be so narrowed as to make another law. The words used are "*all* vessels used on lakes, or rivers, or in inland navigation, including canal boats, barges, and lighters." Language could not be broader or more sweeping. No vessel owner, no matter how local or insignificant his business, no character of waters, wheresoever situate, and no kind of craft, can be excepted from its plain terms. One of the main purposes of the law as it previously stood (although the excepting clause was more comprehensive than the necessities of this purpose demanded) was to save internal commerce from the operation of the limited liability sections. And it seems to us clear that one of the main purposes of the amendment was to include this internal commerce. Whether this was a controlling purpose or not, every word used which can in any wise be applied to the case at bar, is broad enough to necessarily cover every form of internal commerce carried on by water, and every form of craft, no matter how insigniffcant its draft, and no matter how exclusively local and humble its business. This Court will be asked, in order to save the law, that it limit this Act of 1886

to the constitutional limitations of Congress, when the purpose of the law is that it be unlimited and unrestricted. As before suggested, the Court will be asked to thwart the purpose of the law in order to make a good law, although "*judicis est jus dicere non jus dare.*" As it reads, in its *meaning*, *design* and *purpose*, this section applies as completely to the traffic of the Oconee river, in Georgia, and to numerous other rivers of the country, the traffic of which is exclusively internal, the waters of which do not touch other States and have no outlet to other States, as it does to the interstate traffic of the Missisippi, as completely to the "Western lakes lying within a State, such as Cayuga, Seneca and the like," which this Court thought, in the case of Moore vs. American Transportation Company (24 How. 39), could not be reached by such legislation, as it does to the great lakes between the United States and Canada. If this Act be good, there is no limit to the power of Congress in the regulation of commerce. The Constitution does not restrict it to water, and therefore it can pass an Act limiting ever so radically the liability of a common carrier anywhere, no matter how thoroughly internal and local its business. (See "the Genesee Chief," 12 How. 452; Pensacola Tel. Co. vs. Western Union Tel. Co., 96 United States 8 and 9).

We respectfully urge it to be true that the chief purpose of the proviso, as it stood before the amendment, was to except from the operation of the law, owners of vessels engaged in internal commerce. Surely, when the Act of 1851 was passed, the great bulk, if not all, of such vessels used rivers or inland navigation, and there must have been very few, if any, cases of vessels entirely disconnected with foreign or interstate commerce, but which nevertheless did *not* use either rivers or inland navigation. It would be difficult to mention such a case now, of an owner operating a vessel that has no connection with any

except a strictly internal commerce, and yet is not used on a river or inland navigation. The proviso seemed ample for this purpose. Some of the decisions cited in this brief hold, that it grew out of the commerce clause, and that its purpose was that stated by us. It is true, as already noticed, that this exception is broader than was necessary, and, under it, may be included vessels used in interstate commerce. Yet it seems to us that the chief reason for the exception in this proviso was the purpose to exempt the purely domestic commerce of a State. The mere literalism of the law can not be controlling upon the question of its scope or purpose. If the language of the proviso excepted internal commerce by its own unavoidable construction, it would not do so more completely, in effect or purpose, by the use of the very words, even although the act might also include some cases of interstate commerce.

In an opinion in this case, recently published, the Judge of the District Court uses this language (and evidently regards the suggestion contained in it as important): "Again, does the amendment to the limited responsibility law, assailed by the respondents, apply to owners of vessels engaged in internal commerce? In the opinion of the Court, very clearly not. It has no syllable with reference to internal commerce." We respectfully insist that the amendment does so apply, even although it be true that it makes no specific mention of the words "internal commerce"; that it necessarily so applies, in meaning and purpose, and that, if such vessels are withdrawn from its operation, the purpose of the lawmaker must be thwarted, and legislation rather than construction must be resorted to by the Courts. We do not say that it applies *only* to such vessels, that it does *not* apply to those engaged in foreign or interstate commerce, but that it applies to the one as completely and as clearly as to the other. The title of the Act of 1851 is "An Act to

limit the liability of Ship-owners and for other purposes." The proviso to this Act (Section 4,289 of the Revised Statutes) prevented it from being too broad, and confined the general and comprehensive words of the previous sections within the constitutional limitations, and thus, in the opinion of this Court in Lord vs. Steamship Company, 102 United States, saved the law from the infirmity that proved fatal to the trademark law, because "the commerce regulated is expressly confined to a kind over which Congress has been given control." By this Act of 1886, Congress says, and as plainly as if it had used these identical words: "While heretofore we have excepted from the limitations of liability ship owners whose ships are employed on rivers or in inland navigation, our will is that, hereafter, all shipowners shall enjoy the protection of the Act of 1851, and their patrons be subject to the restrictions, wheresoever the vessels may be used, whether in internal commerce or not, regardless of its business and of the waters used by it." Can it be said that this is constitutional because "it has no syllable with reference to 'internal commerce,'" because these very words are not used? *Qui haeret in litera, haeret in cortice.* We, therefore, urge that the correctness of our contention as to the unconstitutionality of the law under review is made more apparent by a consideration of the law as it stood, of the chief purpose of the proviso eliminated by this amendment. But, if we are wrong as to this purpose, our proposition would still remain that the portion of the Fourth Section of the Act of 1886, upon which this libel is based, is too broad to be within the limitations of the fundamental law.

If this law can find support in the admiralty and maritime jurisdiction clause, then, we repeat, it is still, in all of the terms that are germane, entirely too broad, unless this Court can hold that this jurisdiction covers all localities where it chances to be a "little

damp," and, under the guise of jurisdiction, the United States Courts can be given the power to practically destroy the rights of citizens who are compelled to patronize ships.

Wherever it is applicable, the law was radical enough before. Under the decision of the majority of this Court, in Providence and New York Steamship Company vs. Hill Manufacturing Company, 109 United States 578, in the case of loss happening by fire, the owner of the ship is not liable at all unless the neglect was shown to be his own personal neglect, and even then, his liability is confined to his interest in the ship. As we understand this decision, in the case at bar, for the large loss sustained, Mr. Lawton's liability, if based on his personal neglect, can not exceed three thousand, four hundred and ninety-six dollars and seventy-five cents, no matter how careless he personally might have been. Certainly when Congress attempts to extend legislation of this character, it ought to observe the constitutional limitations, and ought not to make it as sweeping as does the Fourth Section of this Act of 1886.

On account of the importance of the proposition that "it is not within the judicial province to give to the words used by Congress a narrower meaning than they are manifestly intended to bear" in order to save an Act from the objection of unconstitutionality, we refer, in addition to the Trade Mark cases, to the following: United States vs. Reese et al., 92 United States 220, 221; the Virginia Coupon cases, 114 United States 304, 305 (a civil case which applies the principle recognized in the Trade Mark cases, and in United States vs. Reese); Sprague vs. Thompson, 118 United States 90; Allen vs. Louisiana, 103 United States 80; State Tonnage Tax cases, 12 Wall 219, 217; Leloup vs. Port of Mobile, 127 United States 647; and Lord vs. Steamship Co., 102 United States 541.

The last case cited is particularly important because in it this Court passed upon the constitutionality of this legislation, as it stood prior to the amendment of 1886, and recognized and applied the principle of the Trade Mark cases, from which we take the proposition made. On page 544 the Court, through Mr. Chief Justice Waite, says: "This disposes of the case, *since*, by section 4289 of the Revised Statutes, the provisions of section 4283 are not applicable to vessels used in rivers or inland navigation, and *this legislation, therefore*, is relieved from the objection that proved fatal to the Trade Mark law, which was considered in Trade Mark cases, 100 United States 82. The commerce regulated is expressly confined to a kind over which Congress has been given control." (Italics ours.) This case is, therefore, direct authority for the application of the principle, that "it is not within the judicial province to give to the words used by Congress a narrower meaning than they are manifestly intended to bear" for the purpose of sustaining the validity of the law, to the construction of the Act now before this Court, and, under it, we may safely say that there is no clause in the Constitution of the United States, "which is the source of all the powers that Congress can lawfully exercise," broad enough to sustain the validity of the very sweeping terms upon which this Libel rests.

Citations may be made of constructions of State statutes which may seem not to be consistent with this contention, but we respectfully submit that the principle is a sound one as to any statute; but, if it be not correct as to an Act of a State Legislature, it certainly is as to an Act of Congress, for the reason already given. Certainly no decision can be cited, based upon an Act of Congress, inconsistent with this reasonable proposition.

(2.) The commerce clause of the Constitution, upon which we submit this legislation must be based and to which the decisions of this Court and of other United States Courts refer such legislation for its sanction, not only does not authorize, but it prohibits any Act by Congress broad enough to control or regulate internal commerce, traffic between citizens of the same State. This clause was intended to place such commerce beyond its control. See Veazie vs. Moore, 14 How. 573, et seq.; Gibbons vs. Ogden, 9 Wheaton 194, 195; Moore vs. American Transportation Company, 24 How. 37 and 39; the "Dan'l Ball," 10 Wall. 564, 565; the Trade Mark Cases, 100 United States 95, et seq.; Lord vs. Steamship Company, 102 United States 543; Sands vs. River Company, 123 United States 295.

In the Dan'l Ball the Court says that the limitation expressed in this clause "necessarily excludes from federal control all commerce not thus designated, and of course that commerce which is carried on entirely within the limits of a State, and does not extend to or affect other States." This observation was made when the Court was discussing the power of Congress to require a license from the ship which gives its name to the case. It is a distinct recognition of the absence of constitutional power in Congress to legislate as to any and all ships. The vessel was engaged in Michigan in transporting goods on the Grand River, a navigable water of the United States, some of which were destined and marked for places in other States than Michigan. (Pages 558 and 559). The constitutionality of the Act of Congress involved was not attacked, and the only questions decided are stated by Mr. Justice Field in the beginning of the opinion. They concern the applicability of the laws, not their validity. But the Court fully recognizes that if the vessel had not been employed in transporting goods destined for other States, or goods brought from without the limits of the State of Michigan and

destined for places within that State, she would have been within the exclusive control of the State. The Act now under review does not recognize, but repudiates this limitation. It applies to any vessel or craft, without regard to its connection with the commerce of another State. Local traffic is frequently carried on by means of vessels which never handle goods destined for places outside of their State, or goods marked from other States, and yet this Act is designed to regulate them as completely as vessels engaged in marine commerce, by its terms applies as completely to them, and such vessels can not be exempt from the operation of the Act without narrowing and limiting the meaning of the words used. We make this observation somewhat parenthetically, in anticipation of the suggestion that this legislation can be regarded as a mere regulation of the vessel. In the Trade Mark cases the Court says: "There still remains a very large amount of commerce, perhaps the largest, which being trade or traffic between citizens of the same State is *beyond the control of Congress.*" (Italics ours).

In Sands vs. the River Company the Court, in discussing the control of the State of Michigan over a river entirely within the State, says: "The Mamstee River is wholly within the limits of Michigan. * * * * The internal commerce of a State, that is the commerce which is wholly confined within its limits, is as much under its control as foreign and interstate commerce is under the control of the General Government."

Two of the cases cited notice specifically the question as to the extent to which Congress can go in limiting the liability of shipowners. In Moore vs. The Transportation Company, the Judge delivering the opinion of the Court, evidently means to say that

an Act, which would affect the liability of shipowners engaged in internal commerce, would be unconstitutional, and that the Act of 1851 was valid, because it dealt only with ships engaged in foreign and interstate traffic. (See page 37, latter part of page, and the concluding paragraph of the decision on page 39.) In Lord vs. the Steamship Company, Judge Waite seems to hold that the Act would be invalid but for Section 4289, the very Section which the Act of 1886 eliminates. If the case be read in connection with the Trade Mark cases referred to by Judge Waite, its importance in this connection will be manifest.

(3.) We respectfully submit that authority, for this legislation can not be found in Section two of the Third Article of the Constitution, which provides that "the judicial power" shall extend to "all cases of admiralty and maritime jurisdiction."

It surely can not be successfully contended that this clause of the Constitution would justify regulations of internal commerce inconsistent with another clause of the same instrument. It will be borne in mind, as already noticed, that the title of the Act of 1851 is "an Act to *limit the liability of shipowners* and for other purposes." That it does not propose so much to deal with ships, as ships, or with navigation, but with the rights and liabilities of shipowners, and, necessarily, of their patrons, and that no legislation can be suggested which more completely regulates the traffic rights of the persons concerned than does this legislation. Surely no construction will be entertained that will make the fundamental law inconsistent with itself.

We admit that the jurisdiction of the Admiralty Court is not circumscribed by the commence clause, that the Courts may try cases involving vessels engaged in purely internal commerce, and questions appertaining to such commerce. But this affects only the *forum*. It does not concern the substantial rights of the parties. In the Genesee Chief, 12 How. 450 (a case not afterwards shaken or questioned, but often approved), the Court, in discussing the constitutionality of the jurisdictional Act of 1845 in connection with the commerce clause (page 452), says: "It would be inconsistent with the plain and ordinary meaning of words, to call a law defining the *jurisdiction* of the United States *a regulation of commerce.* This law gives jurisdiction to a certain extent over commerce and navigation, and authorizes the Court *to expound the laws that regulate them.* But the jurisdiction to administer the existing laws upon these subjects is certainly not a regulation within the meaning of the Constitution. And this Act of Congress merely creates a *tribunal* to carry the laws into execution, but does not prescribe them." (Italics ours). The Court shows how separate and distinct the two things are, and makes plain the proposition that this jurisdictional clause of the instrument affects only the tribunal, and for this reason the law was sustained. See also "The Belfast," 7 Wall. 640, 641.

A shipowner entitled to the benefits of the limited liability Act of 1851, need not go into a Court of Admiralty at all; his rights are secured independently of the tribunal. He may assert them by a plea to a common law action in any Court. See "The Scotland," 105 United States 33-4. Generally it will be found that the remedies of the District Court are more full and complete, but the shipowner is not confined to this Court, and his rights are the same in any tribunal. If this be so, the correlative rights of his patrons ought to be the same, no matter in what tribunal they may be adjudicated.

Other cases, in addition to those heretofore cited, hold that the validity of this legislation depends upon the commerce clause. See the War Eagle, 6 Biss. 366; Lord vs. Steamship Company, 4 Sawyer 292; the "Mamie," 5 Fed. R. 821, the same case is affirmed in 8 Fed. R. 367; in re vessel owners vs. Towing Company, 26 Fed. R. 170; American Transportation Company vs. Moore, 5 Mich. (1 Cooly, pages 392 and 393); Headrich & Bro. vs. the Va., etc., Railway Company, 48 Ga. 549.

Stress may be laid by Libellant upon the decision of Judge Choate, of the New York District Court, in the Long Island, North Shore, P. and N. Y. Co., reported in 5 Fed. R. 599 et seq.

The case arose in 1880, and deals only with the law as it then stood. The vessel in point was not used in rivers or inland navigation, but ran between New York City and a place called Roslyn, on Long Island Sound, an arm of the sea. To reach its destination, it used, exclusively, this sound. Under the amended petition, the vessel was connected with interstate commerce. Therefore, anything that Judge Choate might say with reference to the bearing of the juisdictional clause on the legislation is clearly obiter.

We are not clear as to the meaning of the concluding observation of Judge Waite in the case of Lord vs. the Steamship Company, 102 United States, where the exemption under the law as it stood before this amendment was set up by a plea to a common law action in the Circuit Court. He evidently, speaking for the Court, meant to hold that but for section 4289, the law would be unconstitutional, and be liable to the objection that proved fatal in the Trade Mark cases. The briefs of counsel indicate that no effort was made to rest the constitutionality of the statute upon the jurisdictional clause of the instrument. The success-

ful counsel submitted that the Act of 1851 did not interfere with internal commerce (as it did not, limited as it then was) and that Congress was dealing with instruments of commerce (ships engaged in foreign and interstate trade) over which it had control. The concluding remark perhaps means only that, having sustained the constitutionality of the Act by the authority conferred by the commerce clause, it was unnecessary for the Court to consider whether the judicial power of the United States over cases of admiralty and maritime jurisdiction covered the enforcement of the Act and the remidies under it, because the Court had previously, more than once, decided that the Admiralty Court had cognizance of such cases. The determination of the validity of the Act and of its applicability to the facts of the case, made further consideration unnecessry. In any event, there is nothing in the remark to justify the inference that if the Court had thought that the Act was forbidden by the commerce clause of the Constitution, it would, nevertheless, have sustained it on another principle of the same instrument—a principle too, which deals only with the judicial power, the forum. A law opposed to a single principle of the Constitution is as completely void as if opposed to every principle. This Court has decided a number of times, as already noticed, that this commerce clause forbids any law which attempts in any way to regulate internal commerce. The title and body of the Act of 1851 show that the declared purpose of this legislation was not to regulate ships, their enrollment, registration or any other matter or thing affecting them, as ships, not navigation, with reference to lights, buoys, signals or other matter which has special reference to navigation (although this commerce clause is broad enough to cover a good deal of legislation bearing specifically upon ships and navigation), but to regulate the liabilities of ship owners and (correlatively and necessarily) the

rights of their patrons. A law violative of the Constitution is void regardless of its name, or of its avowed purpose.

Although this may not be important in view of the fact that the law assailed is not confined to vessels in the category of the "Katie," we submit that, because the "Katie" may have been an enrolled vessel of the United States, duly licensed to carry on the coasting trade, this license did not in any wise, affect the traffic liabilities of her owners or the rights of her patrons, although she may have become enrolled and licensed under valid laws, sustainable under the commerce clause of the Constitution. In Gibbons vs. Ogden, this Court recognizes that the licensing of a vessel by Congress "implies no claim of a direct power to regulate the purely internal commerce of a State," and elsewhere in this decision recognizes that Congress can not pass any regulation of the internal traffic of a State. In Veazie vs. Moor, 14 How., the steamboat arrested at the instance of the party claiming the right to navigate the river Penobscot, under an Act of the Legislature of Maine, was "enrolled and licensed for the coasting trade at the Custom House at Bangor" (p. 573), and yet the injunction restraining this steamboat was affirmed by this Court by a unanimous decision, which fully sustains our contention, both as it regards the purpose of the commerce clause of the Constitution and the effect of licensing a vessel. On page 575 of this case the Court says: "The fact of procuring from the Collector of the Port of Bangor a license to prosecute the coasting trade for the boat placed upon the Penobscot by the plaintiff in error (The Governor Dana), does not affect, in the slightest degree, the rights or condition of the parties. These

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remain precisely as they would have stood had no such license been obtained. A license to prosecute the coasting trade, is a warrant to traverse the waters washing or bounding the coasts of the United States."

On page 574 of this case, this Court animadverts very strongly against the proposition that "because the products of domestic enterprise in agriculture or manufactures, or in the arts, may ultimately become the subjects of foreign commerce, that *the control of the means*, or the encouragements by which enterprise is fostered and protected, is legitimately within the import of the phrase foreign commerce, or fairly implied in any investure of the power to regulate such commerce." (Italics ours).

It will be noticed that the section under review applies as completely to vessels not enrolled or licensed, or entitled to such enrollment or license, to vessels not in any sense of the term United States vessels, as it does to those enrolled and licensed, or entitled to such enrollment and license. Without a narrowing of the meaning of the terms used, the former can not be excluded. The law is not limited or confined to vessels like the "Katie."

If, then, this legislation can be separated from its effect upon the traffic rights and obligations of the parties concerned, and can be confined to a mere regulation of vessels, we insist that no authoritative decision can be found which will sustain the validity of a law of Congress requiring a vessel engaged solely in internal commerce, and entirely disconnected from interstate or foreign commerce, to be licensed, or which otherwise regulates such a vessel. Many can be cited against this power of Congress, and some of the decisions hereinbefore discussed are in point on this branch of the case.

In Gibbons vs. Ogden, in discussing the power of Congress over navigation, under the commerce clause, the Court limits it to that which is in some manner

connected with foreign nations or among the several States, or with the Indian tribes. (9 Wheaton 197).

In the Passenger Cases, 7 How. 400, Mr. Justice McLean says: "If Congress should impose a tonnage duty on vessels which ply between ports within the same State, or require such vessel to take out a license, or impose a tax on persons transported in them, the Act would be unconstitutional and void."

In Sinot vs. Davenport, 22 How., this Court held that an Act of the State of Alabama, which was broad enough to regulate vessels under the control of Congress void, but in treating of the control of Congress over ships, the Court, on page 243, recognizes the limitation contended for by us, a limitation which the Act of 1886 not merely ignores, but proposes to repudiate.

The case of "The Bright Star," in 1 Woolworth, is very much in point. The question decided by Mr. Justice Miller was whether she was compelled to take out a license, and was under the inspection laws. This question had been determined in the negative by the Judge of the District Court and his decision was, on appeal, affirmed in a full and exhaustive opinion. Mr. Justice Miller holds that it is not in the power of Congress to regulate vessels confined to internal commerce, and "that Congress has in its legislation steadily kept this in view." Page 275. See also the Tug Oconte, 5 Biss. 463, The War Eagle, 6 Biss., 366. In the "Thomas Swan," 6 Ben., 42, Judge Blatchford approves and follows Judge Miller's opinion, holding that the "Thomas Swan" does not fall within the principle of the "Dan'l Ball," in 10 Wall. See also Gilman vs. Philadelphia, 3 Wall., cited by Judge Miller in 1 Woolworth.

The authorities abundantly show that Congress has no power over any vessel unless it is in some way connected with the commerce which it controls, and surely it has not been vested with a grant broad

enough to cover legislation as to any kind of a vessel, no matter how or where used. The power of Congress over navigation is that confined to the navigable waters of the United States, and which concerns in some way interstate or foreign commerce. In Escanaba Co. vs. Chicago, 107 United States, 682, the Court says: "The power vested in the General Government to regulate interstate and foreign commerce, involves the control of the waters of the United States which are navigable in fact, so far as it may be necessary to insure their free navigation, when by themselves or their connection with other waters they form a continuous channel for commerce among the States or with foreign countries. (The Dan'l Ball, 10 Wall., 557). "Such is the case with the Chicago River and its branches. The Chicago River and its branches must, therefore, be deemed navigable waters of the United States, over which Congress, under its commercial clause, may exercise control to the extent necessary to protect, preserve and improve their free navigation."

In the case of Miller vs. the Mayor of New York, 109 United States, the Court says on pages 393-4: "Having power to regulate commerce with foreign nations and among the several States, and navigation being a branch of that commerce, it has the control of all navigable waters between the States, or connecting with the ocean, so as to preserve and protect their free navigation." See also ex parte Bayer, 109 United States, 631-2; Hatch vs. Iron Bridge Co., 6 Fed. R. 329-330; Yale Lock Manufacturing Co. vs. James, 20 Fed. R. 901-903; Sands vs. the Mamstee River Co., 123 United States, 295; The Montello, 20 Wall. 439.

It seems to us clear, therefore, that whether this law be regarded as a mere regulation of the vessel or

as a navigation law, it is entirely too broad, and can not be sustained.

(4.) In conclusion, we submit what we have heretofore incidently noticed, that if this legislation can be based upon the jurisdictional clause of the Constitution and, if the commerce clause can be expugned, yet still it can not be constitutional. In any event, in order for the Courts of the United States to have jurisdiction, the waters must be navigable waters of the United States which, as already noticed, are waters which by themselves, or by their connection with other waters, form a continuous channel for commerce among the States, or with foreign countries. See the Genesee Chief, 12 How. 443; Allen vs. Newberry, 21 How. 241; The Hine vs. Trevor, 4 Wall. 569; The Belfast, 7 Wall. 624 (3); Steamer St. Lawrence, 1 Black 527; Butler vs. S. S. Co., 130 United States 557.

The admiralty rules adopted by the Supreme Court for the purpose of carrying into effect the Act of 1851, do not enlarge the jurisdiction, but on the contrary, "leave that jurisdiction in admiralty within the bounds set for it by the Constitution and Statutes and the judicial decisions under them." Ex parte Phœnix Insurance Company, 118 United States 623, 624; Johnson vs. Chicago Elevator Company, 119 United States 396, et seq.

Even Judge Choate admits this limitation to navigable waters of the United States (5 Fed. R. 605, 607, 618). As noticed in Butler vs. Steamship Company, 130 United States 557, there are "boundaries and limits" to this jurisdiction, but this part of the Act of 1886 does not recognize any boundary or limit. It applies as completely to waters which have no connection with interstate or foreign commerce, and which

can not be utilized for their purposes, as it does to the ocean, or to the great lakes. There is not a word used in the fourth section, which includes the "Katie," which is not too broad under the most liberal, or loosest, interpretation of this jurisdictional clause. With the proviso of the Act of 1851 eliminated, the law knows no restriction, boundary, or limitation.

The case of the Providence and N. Y. Insurance Company vs. the Hill Manufacturing Company (109 United States) does not discuss the jurisdictional clause in any way. It does not say, or intimate, that Congress can regulate any commerce by any maritime law. In "The Lottawana," 21 Wall, this legislation was not before the Court. The jurisdictional power was discussed, and laws like these are incidently mentioned, but the power to pass such laws is referred to the commerce clause. The Judge in that case expressed the opinion that the Act of 1851, limited as it then was, was a maritime law and, therefore, sustainable under the commerce clause. As it then read, it dealt only with the commerce of the sea or that connected with it, expressly excepting all inland and river navigation. These cases support the position, that Congress, under the commerce clause, may deal with the the responsibility of ship owners by laws of a "truly maritime character," not by legislation like that embodied in the fourth section of the Act of 1886. No decision of any Court, or dictum of any Judge, save only the decision of the District Judge of the Southern District of the United States, can be found which supports, directly or inferentially, the law under review.

We know that a law ought not to be declared unconstitutional unless this fatal infirmity is made clearly to appear—to appear beyond any reasonable doubt. But when this is done, when no legal or sound reason can be given to sustain the law, then the statute must be declared inoperative, and another instance given of hasty and ill-considered legislation, which, for many reasons, escapes the careful observation of the lawyers who form a part of the law-making body.

Nothing can be more conducive to the general good, than the steady and consistent conservation by the courts of the different, but not antagonistic, powers of the Federal and the State Governments. Nothing can be more disastrous to the spirit and genius of our complex but harmonious system, than the unconstitutional encroachment by Congress upon the rights of the States. It is the hightest duty and the supremest privilege of the judiciary to see to it that this "most even balance" is not destroyed or impaired.

The observations of this Court in United States vs. Reese, 92 United States 221, when it held that Congress had not, by "appropriate legislation," reached the end proposed, are entirely germane to the case at bar, and fittingly conclude this brief: "It would certainly be dangerous if the Legislature could set a net large enough to catch all possible offenders" (in this case all persons who are compelled to patronize any kind of a vessel), "and leave it to the Courts to step inside and say who could be rightfully detained, and who should be set at large. This would to some extent substitute the judicial for the legislative department of the Government. The Courts enforce the legislative will when ascertained, if within the constitutional grant of power. Within its legitimate sphere Congress is supreme and beyond the control of the Courts; but if it steps outside of its constitutional limitations, and attempts that which is beyond its

reach, the Courts are authorized to, and when called upon in due course of legal proceedings, must, annul its encroachments upon the reserve power of the States and the people. To limit this statute in the manner now asked for, would be to make a new law, not to enforce an old one. This is no part of our duty."

Respectfully submitted,

~~DENMARK, ADAMS & ADAMS,~~

Sam'l B. Adams,

Attorneys for Petitioners.

Office Supreme Court U. S.
FILED,
MAR 2 1891
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

EX PARTE.

GARNETT, STUBBS & CO. *et al.*, IN CASE OF JOHN LAWTON, OWNER OF THE STEAMER KATIE,

VS.

THE STEAMER KATIE, ETC., AND GARNETT, STUBBS & CO. *et al.*

Libel in the United States District Court for the Eastern Division of the Southern District of Georgia.

BRIEF

OF R. G. ERWIN, COUNSEL FOR JOHN LAWTON.

THE MORNING NEWS PRINT, SAVANNAH, GA

IN THE

SUPREME COURT OF THE UNITED STATES.

EX PARTE.

GARNETT, STUBBS & COMPANY, *et al.*,
IN CASE OF JOHN LAWTON, OWNER
OF THE STEAMER "KATIE,"
vs.
THE STEAMER "KATIE," ETC., AND
GARNETT, STUBBS & COMPANY, *et al.*

Libel in the United States District Court for the Southern District of Georgia, E. D.

BRIEF OF COUNSEL FOR JOHN LAWTON.

The libel filed by John Lawton makes substantially the following case:

He is the owner of the steamboat Katie, which was at the time of the filing of the libel, and at the time of the disaster hereinafter stated, an enrolled vessel of the United States, duly licensed to carry on the coasting trade. For more than twenty years before the filing of the libel, said steamboat had been continuously engaged in transporting merchandise, goods, wares and other commodities from and to the ports of Savannah and Augusta and intermediate ports and landings on the Savannah river, in the States of South Carolina and Georgia, and was engaged in such business as one of through lines of carriers, issuing through bills of lading to and from ports and places in the States of Georgia and South Carolina and ports and places in other States of the United States and in foreign countries.

On October 8, 1887, the "Katie" left Augusta, Georgia, on a voyage to Savannah, in the same State, intending to stop at intermediate ports and places on the Savannah river, in the States of South Carolina and Georgia respectively, to load a cargo to consist chiefly of cotton. On October 10th, 1887, while she was proceeding on said voyage and after having taken on 643 bales of cotton from different river landings, she struck on a sand bar and remained there until October 12th, on which day fire was discovered in the cotton; after several hours work, the fire was extinguished Some of the cotton was jettisoned and some of it was damaged by fire and water. The "Katie" got off the sand bar on October 13th, and reached Savannah on the 14th of October, 1887.

Attached to the libel there is a list of the cargo received by the "Katie" on said voyage, showing the landings from which the same was received, the damage done to the same and other particulars. More than one-third of the cargo was received from South Carolina landings, the balance from Georgia landings.

The Savannah river between Savannah and Augusta is a navigable interstate stream and the contracts entered into between the shippers of the cargo and libellant for the carriage of the same are maritime.

All of the consignees of the cotton, with one exception, brought suits in State courts in Georgia against John Lawton for the value of the cotton lost or damaged in consequence of the fire which occurred on the "Katie." The libellant contests his liability for the loss and damage which happened by reason of or by means of said fire, not only because of certain other matters propounded in his libel, but also on the ground that the Limited Liability Act of Congress, approved March 3, 1851, as amended by the Act approved June 19, 1886, exempts him from liability in the premises, but while so contesting his liability, if it should be adjudged that he is in any way liable for the said loss or damage, or any part thereof, he claims the benefit of the limitation of liability, provided for in the 3d and 4th sections of the said Act of March 3, 1851.

The particulars of the disaster and other matters, not necessary to be here stated, are duly propounded in the libel, which contains an offer to give stipulation with sureties for the payment of the value of the "Katie" and her pending freight into court, and concludes with appropriate prayers.

I.

The Savannah river is an interstate stream. "The boundaries of Georgia, as deduced from the Constitution of Georgia, the convention of Beaufort, the Articles of Cession and Agreement entered into on the 24th of April, 1802, the resolution of the General Assembly of December 8th, 1826. and adjudications and compromises affecting Alabama and Florida, are as follows: From the sea, or the mouth of the river Savannah, along the stream thereof to the fork or confluence made by the rivers Keowee and Tugalo, and thence along said river Tugalo until the fork or confluence made by said Tugalo and the river Chattooga, and up and along the same to the point where it touches the northern boundary line of South Carolina and the southern boundary line of North Carolina, which is at a point on the thirty-fifth parallel of north latitude, reserving all the islands in said rivers Savannah, Tugalo and Chattooga to Georgia, thence on said line of said thirty-fifth parallel, from said point of inter-section, and on and along said line west, to a point where it merges into and becomes the northern boundary line of Alabama, it being the point fixed by the survey of the State of Georgia, and known as Nickajack, thence in a direct line to the great bend of the Chattahoochee river, called Miller's Bend, it being the line run and marked by said survey, and thence along and down the western bank of said Chattahoochee, along the line or limit of high-water mark to its junction with Flint river, thence along a certain line of survey, made by Gustavus J. Orr, a surveyor on the part of

Georgia, and W. Whitner, a surveyor on the part of Florida, beginning at a fore-and-aft tree, about four chains below the present junction; thence along this line east, to a point designated thirty-seven links north of Ellicott's Mound on the St. Mary's river, thence along the middle of said river to the Atlantic ocean, and from thence to the mouth or inlet of said Savannah river, to the place of beginning, including all the lands, waters, islands and jurisdictional rights within said limits, and also all the islands within twenty marine leagues of the sea coast."

"Code of Georgia, Section 15."

Article II of the Convention of Beaufort, referred to in Georgia Code, Section 15, provides as follows: "The navigation of the river Savannah at and from the bar and mouth, along the northeast side of Cockspur Island, and up the direct course of the main northern channel along the north side of Hutchinson's Island, opposite the town of Savannah, to the upper end of said island, and from thence up the bed or principal stream of the said river to the confluence of the rivers Tugalo and Keowee, and from the confluence up the channel of the most northern stream of Tugalo river to its source, and back again by the same channel to the Atlantic ocean is hereby declared to be henceforth equally free to the citizens of both States, and exempt from all duties, tolls, hinderance, interruption and molestation whatsoever, attempted to be enforced by one State on the citizens of another, and all the rest of the river Savannah to the southward of the foregoing description, is acknowledged to be the exclusive right of the State of Georgia."

Hotchkiss' Statute Law of Ga. and State Papers, p. 916.

The Savannah river is navigable water of the United States within the meaning of the Acts of Congress, as it flows into the Atlantic ocean and forms with it a highway over which commerce is carried on with other States and with foreign countries in the customary modes in which such commerce is conducted by water.

The Daniel Ball, 10 Wall., 557, 563.
The Montello, 11 Wall., 411, s. c. 20 Wall., 430.

The "Katie" was at the time of the fire actually engaged in interstate commerce; a large part of her cargo had been loaded at South Carolina landings and was being transported to Savannah, Georgia; the cotton loaded at the Georgia landings was in the course of the trip taken to South Carolina landings, so that all of the cargo, besides being carried on a vessel navigating an interstate stream, actually passed from one State to the other in the course of her voyage.

The "Katie" was, therefore, subject to regulation by the Congress of the United States under Article I, Section VIII, Paragraph 3, of the Constitution of the United States which gives to Congress the power to regulate commerce "among the several States." "Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, and the naviga-

tion of public waters for that purpose, as well as the purchase, sale and exchange of commodities. The power to regulate that commerce, as well as commerce with foreign nations, vested in Congress, is the power to prescribe the rules by which it shall be governed—that is, the conditions upon which it shall be conducted; to determine when it shall be free and when subject to duties or other exactions. The power also embraces within its control all the instrumentalities by which that commerce may be carried on, and the means by which it may be aided and encouraged."

Gloucester Ferry Co. vs. Penn, 114 U. S., 196, 203, 204.

The "Katie" was certainly subject to all the Acts of Congress relating to vessels of the United States and regulating the carriage of freights on steam vessels.

The Daniel Ball, 10 Wall., 557.

II.

"Congress deals with the vessel as an instrument of commerce, and the rights and obligations of the owners as related to such instrument. The vessel, being engaged in interstate or foreign commerce, must conform to the regulations prescribed; and any party using it for the purposes of domestic commerce, enjoys all the benefits afforded by these regulations, for they inhere in the vessel and cannot be separated from it. If a party avails himself of these benefits by the use of the vessel, he must also suffer the inconveniences incident to such use. He must take the vessel as he finds it, with all the inconveniences imposed, as well as the additional security afforded."

Lord vs. S. S. Co., 4 Sawyer, 292, 299.

The "Katie" being thus subject to regulations prescribed by Congress, including those which impose burdens upon the vessel and those which relieve her from obligations and liabilities which she would have been under by the common law, and it being beyond question and in fact admitted by the petitioners for the writ of prohibition that she is within the language of the Limited Liability Act of 1851, as amended by the Act approved June 19, 1886, the only questions to be determined are: First. Did Congress exceed its powers in passing the statute of June 19, 1886? Second. If it did, can the limited liability law as it now stands be applied to such vessels as Congress night lawfully regulate by such legislation?

It is, of course, important to definitely determine the exact scope of the limited liability law as it now stands. It is contended in behalf of petitioners that the Act of June 19, 1886, attempts to extend the provisions of the Act of March 3, 1851, to all vessels whatsoever. We cannot agree to this. It is true that Section 4289 of the Revised Statutes, as it now reads and taken by itself, is applicable, in terms, to all vessels whatsoever; but it was made so by the fourth section of the Act approved June 19, 1886. There is one general intent to be traced

throughout this whole Act, and that is the encouragement of American shipping; this is done by abolishing certain fees and charges which vessels had before that time to pay; by changing or abolishing certain penalties to which vessels were theretofore subject; by prohibiting the carriage of passengers by foreign vessels between ports and places in the United States; by providing for the exclusion of vessels of a foreign country discriminating against vessels of the United States from the benefit of certain exemptions from taxation, by directing the President to invite foreign governments to abolish tonnage and other charges; by authorizing the President to suspend commercial privileges to vessels of any foreign country denying the same to United States vessels and by extending the provisions of the Limited Liability Act. This general intent must govern and the different classes of vessels mentioned in Section 4 of the Act must be limited to vessels of the United States.

"The word *all*, as applied to persons and things, occurs frequently in all writings and the generality of the phrase is often to be restrained in an Act, not only by the context, but by the general form and scheme of the statute, as demonstrative of the intention of the Legislature."

Phillips vs. Saunders, 15 Ga., 518, 521.

A word of general signification which may cover many classes is frequently limited by construction to one class, and the different classes of vessels mentioned in the Act of 1886 must be limited to all vessels of the United States. Such restriction by construction of such words as *all* or *any* in statutes is common. See the cases collected in Endlich on the Interpretation of Statutes, Sections 114, 115 and 137.

There is, of course, a strong presumption against the intent of Congress to violate the Constitution, and we must adopt the restricted construction of a statute when a more liberal one will bring us in conflict with the fundamental law.

Endlich on the Interpretation of Statutes, Sections 178, 179.

No law can be construed counter to the fundamental law; if it admits of another construction, this must be adopted.

Lieber's Hermeneutics, 160.

The case of "The Scotland" (105 U. S., p. 24) may seem to militate against the restriction of the general words used in Section 4 of the Act of June 19, 1886, but a careful examination of the case will show that it does not. This Court there held that the Limited Liability Act of 1851 could be applied to the owners of foreign as well as domestic vessels only because it made a rule of maritime law, which the Courts of this country would administer as the most just to be applied in maritime cases. (See pages 29 and 30). This Court recognized in that case that the word *all* as used in the last section of the Limited Liability Act of 1851, could not be used literally, but must be to some degree restricted, for it says on page 29: "In administering justice between parties it is essential to know by what law, or code, or system of laws, their mutual rights are to be determined. When they arise in a particular country or State they are generally to be determined by the

laws of that State. Those laws pervade all transactions which take place where they prevail, and give them their color or legal effect. Hence, if a collision should occur in British waters, at least between British ships, and the injured party should seek relief in our courts, we would administer justice according to the British law, so far as the rights and liabilities of the parties were concerned, provided it were shown what that law was."

We must, therefore, construe the 4th Section of the Act of June 19, 1886, as applicable to American shipping, that is, to vessels of the United States, though, of course, it may be applied to foreign vessels, not because it uses the terms "*all* sea-going vessels," etc., but because it forms a rule of the maritime law for the Courts of the United States, which they will administer in all cases that come before them, with the exceptions noted in the quotation from the decision in the case of "The Scotland."

III.

So construed, Section 4 of the Act of June 19, 1886, is valid and constitutional, and Congress had power to enact the law. First, in the exercise of the power delegated to Congress, by Paragraph 3 of Section 8, of Article I, of the Constitution of the United States, to regulate commerce with foreign nations and among the several States. Second, because Paragraph 1, Section 2, Article III of the Constitution provides that the judicial power shall extend to all cases of admiralty and maritime jurisdiction, and Paragraph 17 of Section 8, Article I, confers upon Congress the power to make all laws necessary and proper to carry into execution all powers vested by the Constitution in any department of the government of the United States. Commerce includes navigation. It means intercourse. It includes all the subjects of such intercourse and the transportation of persons and of property.

Gibbons vs. Ogden, 9 Wheaton, 189.
Henderson vs. Mayor of New York, 92 U. S., 270.

The power to regulate commerce within the constitutional limits is exclusive.

Gibbons vs. Ogden, 9 Wheaton, 189.
Passenger Cases, 7 Howard, 283, 393.
Ex Parte McNiel, 13 Wallace, 236.
State Freight Tax Case, 15 Wallace, 232.

Where Congress acts within the scope of its powers, its authority is supreme, and it is no objection that a law of Congress may trench upon the authority of a State, if the law be within its Constitutional powers.

Henderson vs. Mayor of New York, 92 U. S., 272.
Gibbons vs. Ogden, 9 Wheaton, 189.

There is no neutral ground.

Ibid.

"Whatever subjects of this power are in their nature national or admit of one uniform system or plan of regulation may justly be said to be of such a nature as to require exclusive legislation by Congress."

P. & S. Mail S. S. Co. vs. Pa., 122 U. S., 326.
Henderson vs. Mayor of N. Y., 92 U. S., 272-3.

Commerce among the States includes the navigation of public waters for that purpose. The power to regulate commerce among the States, vested in Congress, is the power to prescribe the rules by which it shall be governed, that is, the condition by which it shall be conducted, to determine when it shall be free and when subject to duties or other exactions.

The power also embraces within its control all the instrumentalities by which that Commerce may be carried on and the means by which it may be aided or encouraged, etc., etc.

Gloucester Ferry Co. vs. Pa., 114 U. S., 203-4.
White's Bank vs. Smith, 7 Wallace, 655.

See good instance of exercise of constitutional power by Congress conflicting with the effect of lawful State enactments in Veazie Bank vs. Fenno, 8 Wall., 533, cited with approval in Head Money Cases, 112 U. S., 596.

"Measures, however, scarcely distinguishable from each other may flow from distinct grants of power, as for example, Congress does not possess the power to regulate the purely internal commerce of the States, but Congress may enroll and license ships and vessels to sail from one port to another in the same State, and it is clear that such ships and vessels are deemed ships and vessels of the United States, and that as such they are entitled to the privileges of ships and vessels employed in the coasting trade."

State Tonnage Tax Case, 12 Wall., 215.

If therefore the vessels named in the amendment as being those used on lakes or rivers *may be* instruments of interstate commerce, it will make no difference that they ply on waters wholly within the limits of one State.

The Daniel Ball, 10 Wall., 566.
Stockton vs. Balt & N. Y. Rd. Co., 32 Fed., 9.
State Tonnage Tax Cases, 12 Wall., 205-214.

The entire navigable waters of the country are the navigable waters of the United States.

Stockton vs. Balt. & N. Y. Rd Co., 32 Fed., 20.
Gilman vs. Philadelphia, 3 Wall, 724-5.

Besides, all lakes and rivers may form, in connection with canals and railroads, highways of interstate commerce, and the instrumentalities by which such commerce is conducted on the lakes and rivers (i. e., ships and vessels of all sorts) may be regulated by Congress.

In the case of White's Bank vs. Smith, this Court had occasion to consider the Act of Congress, which provides that no bill of sale, mortgage, hypothecation or conveyance of any vessel of the United States shall be valid, unless the same be recorded in the office of the Collector of Customs, where the vessel is registered or enrolled. The Act was sustained by this court, Mr. Justive Nelson delivering the unanimous opinion of the Court, says on this point:

"Some question is made as to the power of Congress over the title and property of vessels of the United States to such an extent as to enable it to pass a recording act. But after the regulation of this species of property by the several acts of Congress to which we have referred, and in respect to which there has never been a question, there can be very little hesitation in conceding the power to protect the rights of subsequent bona fide purchasers and mortgagees therein. Ships or vessels of the United States are the creations of the legislation of Congress. None can be denominated such, or to be entitled to the benefits or privileges thereof, except those registered or enrolled according to the Act of September 1, 1789, and those which, after the last day of March, 1793, shall be registered or enrolled in pursuance of the Act of 31st December, 1792, and must be wholly owned by a citizen or citizens of the United States, and to be commanded by a citizen of the same. And none can be registered or enrolled unless built within the United States before or after the 4th of July, 1776, and belonging wholly to a citizen, or citizens, of the United States, or not built within said States, but on the 16th of May, 1789, belonging, and thence continuing to belong, to a citizen or citizens thereof; or ships or vessels captured from the enemy in war by a citizen, and lawfully condemned as prize, or adjudged to be forfeited for a breach of the laws of the United States, and being wholly owned by a citizen or citizens thereof. Ships or vessels not brought within these provisions of the Acts of Congress and not entitled to the benefits and privileges thereunto belonging, are of no more value as American vessels than the wood and iron out of which they are constructed. Their substantial, if not entire value consists in their right to the character of national vessels, and to have the protection of the national flag floating at their mast's head. Congress having created, as it were, this species of property and conferred upon it its chief value under the power given in the Constitution to regulate commerce, we perceive no reason for entertaining any serious doubt but that this power may be extended to the security and protection of the rights and title of all persons dealing therein. The judicial mind seems to have generally taken this direction."

7 Wallace, 646, 655, 656.

See to the same effect and confirming White's Bank vs. Smith.

Aldrich vs. Ætna Co., 8 Wall., 491.

The Lottawanna, 21 Wall., 558, 577.

Counsel for petitioners contends that whether a vessel is subject to regulation by Congress depends upon the use to which she is put; that if she is used in interstate commerce she is subject to Congressional regulation, and if she is not so used, she is then only subject to State regulation. The case of White's Bank vs. Smith would seem to be decisive authority against such a position.

This Court has decided that a vessel bound from one port in California to another port in the same State was engaged in commerce with foreign nations, because in going between the two ports she navigated the Pacific ocean.

See Lord vs. S. S. Co., 102 U. S., 541, 544.

By parity of reasoning it follows conclusively that a vessel bound from one port to another port in the same State and passing over an interstate stream is engaged in interstate commerce over navigable waters of the United States, or such as form by themselves or by uniting with other waters a continued highway, over which commerce is or may be carried on with other States or foreign countries in the customary modes in which such commerce is conducted by water (The Daniel Ball, 10 Wall., 557, 563), and while navigating such waters, a vessel, though plying between ports of the same State, navigates among vessels engaged in interstate commerce and in every just sense such vessel is herself engaged in commerce among the States.

It is true that there is a commerce not in any sense interstate, and which is in no wise subject to Congressional regulation. Such commerce may be at times carried on by means of vessels, which are themselves instruments also of interstate commerce; they then become subject to Congressional regulation. (See the cases of the Daniel Ball and The Montello, already cited).

Commerce carried on by means of a vessel which did not engage in any interstate business would be subject only to State regulation. But while such commerce may exist, it must be indeed very small. Indeed we do not see how, under the decisions of this Court, such commerce can be carried on except on such lakes and rivers as lie entirely within the borders of one State and have no connection with the ocean or the Great Lakes, either by natural water courses or canals; that there are such lakes and rivers there can be no doubt, but so far as our knowledge extends, none of them are of sufficient size to accomodate a business which would warrant the name of commerce being applied to it. In other words, while it is possible to imagine that there may be a commerce carried on by vessels not subject to regulation by Congress, yet it is so insignificant as to be practically unknown. It would seem to follow, therefore, that even if Section 4 of the Act of June 19, 1886, is considered literally as applicable to all vessels engaged in navigation on lakes and rivers or in inland navigation, it would still not exceed the limits of the power conferred upon Congress to regulate commerce between the States, because all vessels, with insignificant exceptions, are engaged in interstate commerce, and as to such exceptions the maxim *de minimis non curat lex* may be applied.

Hartranft vs. Dupont, 118 U. S., 223, 227.
U. S. vs. Str. Mollie, 2 Woods, 318, 321.

It is true that there are decided cases which conflict with the views just expressed, but they will be found on examination to have been decided before the decision rendered by this Court in the case of Lord vs. S. S. Co.

IV.

Paragraph 1 of Section 2, Article III of the Constitution of the United States provides that the judicial power shall extend to all cases of admiralty and maritime jurisdiction. The scope of that jurisdiction has long since been definitely settled by this Court. In The Hine vs. Trevor all the former cases on the subject are reviewed and the conclusion is reached that this jurisdiction extends wherever vessels float and navigation can be successfully conducted.

4 Wall., 555, 566 and 567.

In the case of The Belfast this Court definitely determined that the power of regulating commerce, as conferred by the Constitution on Congress, had nothing to do with defining the limits of the admiralty jurisdiction of the Courts of the United States; that in cases of tort, locality was the test of the jurisdiction and in cases of contract the nature of the same, whether maritime or otherwise.

7 Wall., 624, 637, 640, 641, 642.

The same principles have been enunciated in the following cases:

The Eagle, 8 Wall., 15.
The Daniel Ball, 10 Wallace, 557.
The Montello, 11 Wallace, 411 and 20 Wall., 430.
Ex Parte Boyer, 109 U. S., 629.

It is true that no case has yet come before this Court which presented the question as to whether the admiralty jurisdiction extended to a stream lying entirely within the limits of one State and on which neither interstate nor foreign commerce *could be* conducted. Dicta are to be found in the cases just cited to the effect that the admiralty jurisdiction extends wherever navigation can be successfully carried on. For instance see

The Hine vs. Trevor, 4 Hall., 563, 566 and 567.

And as the commercial clause of the Constitution has nothing whatever to do with that clause of the instrument which extends the judicial power to cases of admiralty and maritime jurisdiction, it is difficult to perceive how any distinction exists in principle between water courses on which interstate commerce may be carried on by vessels and those which can be navigated by vessels engaged in State commerce only. Nor is it likely that such a case will ever come before this Court for the reason, as already stated, that the business done by vessels of the latter class is so insignificant as scarcely to deserve the name of commerce or to result in litigation of any consequence.

The admiralty jurisdiction being thus extensive, the questions then arise whether any change at any time can be made in the laws which govern and regulate cases within its scope, and if so, by what authority? These questions were considered by this Court in the Lottawanna case. Mr. Justice Bradley, speaking for all the members of the Court except one, says:

"But we must also remember that the court cannot make the law, it can only declare it. If, within its proper scope any change is desired,

in its rules, other than those of procedure, it must be made by the legislative department. It cannot be supposed that the framers of the Constitution contemplated that the law should forever remain unchangeable. Congress undoubtedly has authority under the commercial power, *if no other*, to introduce such changes as are likely to be needed."

21 Wall., 576, 577.

We have italicized the words "if no other" because they indicate a doubt, at least, as to whether Congress did not have this power under provisions of the Constitution other than the commercial clause.

In the case of Providence & New York Steamship Co. vs. Hill Manufacturing Co. (109 U. S., 578), the same Justice, announcing the opinion of a majority of the Court, says on page 589: "We have no doubt that Congress had power to pass the law. *It is not only a maritime regulation in its character*, but it is clearly within the scope of the power given to Congress 'to regulate commerce.'" (Italics ours.)

The law here referred to as that which Congress had power to pass was the Limited Liability Act of 1851, and the words we have italicised indicate that the maritime character of the regulation might bring it within the scope of the power which Congress possesses under Paragraph 17 of Section 8, Article I of the Constitution, which provides that Congress shall have power to make all laws necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States or in any department thereof, taken in connection with that clause of the Constitution which declares that the judicial power shall extend to all cases of admiralty and maritime jurisdiction.

This question has been carefully considered in several cases decided in the Circuit and District Courts.

Judge Choate, in the case of Petition of the Long Island, etc., Transportation Co., carefully examined the question, and reached the conclusion that the Limited Liability Act of 1851 was the lawful exercise by Congress of the powers conferred by these clauses of the Constitution. He says: "These considerations and the views of the Supreme Court above quoted, taken in connection with the fact that Congress has the power in its discretion to give or withhold from suitors in the Courts of the United States particular remedies, it seems to me, make it a fair question for discussion whether Congress had not the general power to adopt from the general maritime law an existing rule or principle of that law, and to make it as part of the maritime law of the United States, a uniform rule of decision in the Admiralty Courts of the United States, *independently* of the power of Congress to regulate commerce between the States and with foreign countries. In one of the latest decisions of the Supreme Court, under this very statute (Lord vs. Steamship Co., October term, 1880), which was the case of a vessel engaged in commerce between San Francisco and San Diego, the Court held the statute applicable on the ground that commerce upon the ocean, and beyond the territorial limits of any State, must be regarded as foreign commerce, although the persons and things carried were not in transit between the States or to or from foreign countries, and that therefore the statute could have effect in that case as a regulation of commerce. But the Chief Justice, in giving the opinion of the Court, recognizing the fact that the question of the effect of the statute might arise in a case where the commercial power of Congress would not apply, makes the following saving observation in respect to this statute:

'Having found ample authority for the Act as it now stands in the commercial clause of the Constitution, it is unnecessary to consider whether it is within the judicial power of the United States over cases of admiralty and maritime jurisdiction.' By this I understand the Court to intimate that they consider it an open question whether independently of the power to regulate commerce, the statute could be justified under the clauses of the Constitution above referred to, vesting the judicial power in all admiralty and maritime causes in the Courts of the United States, and giving Congress power to legislate to carry into effect this clause. The question thus foreshadowed by the Supreme Court has actually arisen for decision in this case; and, after giving the matter a careful consideration, I am of opinion that the statute can thus take effect independently of its being a regulation of commerce, as an act prescribing and limiting the remedies to be enjoyed by suitors in the Admiralty Courts of the United States. Whether it can, under the same clauses of the Constitution, be justified as the exercise by Congress of a general power to change the maritime law of the United States, it is unnecessary in this case to determine."

5 Federal Reporter, 599, 616, 618.

Judge Love in a carefully considered opinion reaches the same conclusion.

U. S. vs. B. & H. Ferry Co., 21 Fed. Reporter, 331, 338, 341.

A recent decision of this Court, as we construe it, would seem to go very far towards settling any doubt on this question. In the case of Butler vs. The Boston Steamship Co., Mr. Justice Bradley, announcing the unanimous opinion of this Court, after examining previous decisions of the Court, reaches this conclusion:

"These quotations are believed to express the general, if not unanimous views, of the members of this Court for nearly twenty years past; and they leave us in no doubt that, whilst the general maritime law, with slight modifications, is accepted as law in this country, it is subject to such amendments as Congress may see fit to adopt. One of the modifications of the maritime law, as received here, was a rejection of the law of limited liability. We have rectified that. Congress has restored that article to our maritime code. We cannot doubt its power to do this. As the Constitution extends the judicial power of the United States to 'all cases of admiralty and maritime jurisdiction,' and as this jurisdiction is held to be exclusive, the power of legislation on the same subject must necessarily be in the National Legislature, and not in the State Legislature. It is true, we have held that the boundaries and limits of the admiralty and maritime jurisdiction are matters of judicial cognizance, and cannot be affected or controlled by legislation, whether State or National. Chief Justice Taney, in The St. Lawrence, 1 Black, 522, 526, 527; The Lottawanna, 21 Wall., 558, 575, 576. But within these boundaries and limits the law itself is that which has always been received as maritime law in this country, with such amendments and modifications as Congress may from time to time have adopted."

130 U. S., 527, 556, 557.

This case was decided April 22, 1889, nearly three years after the Act of June 19, 1886, was passed, and while that Act was not before the Court the following language is at least significent of the fact that this Court had it in mind at the time the opinion in that case was pronounced:

"It being clear, then, that the law of limited liability of ship owners is a part of our maritime code, the extent of its territorial operation (as before intimated) cannot be doubtful. It is necessarily co-extensive with that of the general admiralty and maritime jurisdiction, and that by the settled law of this country extends wherever public navigation extends—on the sea and the great inland lakes, and the navigable waters connecting therewith. Waring vs. Clarke, 5 How., 441; The Genesee Chief vs. Fitzhugh, 12 How., 443; Jackson vs. The Magnolia, 20 How., 296; Commercial Transportation Co. vs. Fitzhugh, 1 Black, 574."

Butler vs. Boston S. S. Co., 130 U. S., 557.

There are some cases referred to by counsel for petitioners, decided in the Circuit and District Courts, which appear to conflict with the position we here take. The Bright Star, Wollw., 267, as is shown by Judge Love in the case of U. S. vs. B. & H. Ferry Co., turns upon the construction of an Act of Congress which, in express terms, limited the jurisdiction to cases growing out of commerce between different States and Territories; besides, it was decided before the case of The Daniel Ball, with which many of its dicta are in direct conflict.

The decision in the case of The Tug Oconto (5 Bissell, 460,) cannot be reconciled with what this Court decided in the case of The Montello, 20 Wallace, 430.

The War Eagle, 6 Bissell, 364, also cited by counsel for petitioners, does not touch this point at all.

The case of The Steam Propellor Thomas Swan, 6 Benedict, 42, was decided two years before the case of The Montello, and we respectfully submit that the decision in this latter case cannot be reconciled with the decision in the former.

It is to be noted that the Limited Liability Act in no way attempts to affect the jurisdiction in admiralty, either to enlarge or contract it. These Acts prescribe maritime regulations and adopt general maritime law of Europe.

Butler vs Boston S. S. Co., 130 U. S, 557.
The Scotland, 105 U. S., 28.

V.

But if we are wrong in all the positions so far taken, and this Court should hold that Section 4 of the Act of June 19, 1886, is to be literally construed, that so construed it is broad enough to cover all vessels of every nature and kind whatsoever, and goes farther than the power of Congress extends, the question then will arise whether the Act is unconstitutional *in toto*, or whether it can be applied to all cases within the reach of the legislative power of the United States.

In answering this question, it is material to bear in mind the scope of the unquestioned constitutional power of Congress in the premises. We can be sure that it extends to the regulation of all vessels of the

United States and to the security and protection of the *rights* and title of all persons dealing therein.

White's Bank vs Smith, 7 Wall., 655, 656.
The Aldrich vs. Ætna Co., 8 Wall., 491.
The Lottawanna, 21 Wall., 577, 578.

So that if instead of saying in the fourth section of the Act of June 19, 1886, that the provisions of the Limited Liability Act of 1851 shall apply to all sea-going vessels, and also to all vessels used on lakes and rivers, Congress had said that they shall apply to all vessels of the United States, Section 4 would clearly have been constitutional, and would not have gone one step farther than the legislative power of Congress admittedly extends.

Now, as we have already shown, the main object and intent of the Act of June 19, 1886, was to protect, foster and encourage vessels of the United States and the commerce conducted through their agency. It certainly seems anomalous that the fourth section of this Act could be singled out and by a literal construction of its words be made to extend to other classes of vessels besides those clearly contemplated by the other sections of the Act. But if we give this strained construction to the fourth section of said Act, what vessels can there possibly be covered by the words of Section 4 giving them their broadest meaning, concerning which there can be any doubt as to the power of Congress to legislate? The only ones are the small water crafts, which no one would ever think of calling vessels, used on the lakes and rivers lying entirely within the borders of one State, and having no connection with any stream by means of which interstate or foreign commerce may be conducted. The number of vessels engaged in inland navigation or in navigating the rivers of the United States, is very great indeed, and their aggregate tonnage must many times exceed the tonnage of the United States vessels navigating the seas; and yet, if counsel for the petitioners succeeds in his contention, this great number of vessels, not covered by the Act of 1851, must lose the benefit sought to be conferred by Congress by means of the fourth section of the Act of June 19, 1886, and still remain subject to every burden put upon them by Congress. This very vessel, the "Katie," may find it greatly to its interest to carry cotton unbaled from Augusta to Savannah, but the Act of Congress steps in and prevents her so doing. She must have her boilers inspected, and if they do not stand inspection they must be repaired at a large expense or new ones purchased to replace them. She is subject to all such Congressional regulation, but in common with all other vessels engaged in inland navigation she can, says counsel for petitioners, have no protection and no limit of liability because Congress has gone too far, and we cannot tell whether that body would have attempted to favor vessels engaged in inland navigation, which Congress certainly can affect by legislation, unless at the same time the same benefits were extended to row boats and other small crafts used on waters entirely within the limits of one State and on which no interstate or foreign commerce can be conducted!

Cases decided by this Court will best show the fallacy of this position. In Ratterman vs, Western Union Tel. Co., 127 U. S., 411, this Court held that the law of a State providing for the taxation of *all* the

receipts of a telegraph company was valid as to receipts derived from State business, but unconstitutional and void as to interestate business.

127 U. S., 411.

To the same effect,

Western Union Tel. Co., vs. Ala., 132 U. S., 4

See also

Philadelphia S. S. Co. vs. Pa., 122 U. S., 326, 338 to 340.

In Robbins vs. Shelby County, it was held that the Tennessee law taxing all drummers was good as to the drummers of Tennessee, but unconstitutional as a regulation of interstate commerce as to the drummers of other States.

120 U. S., 489 and 499.

See also

Tiernan vs. Ricker, 102 U. S., 123.
Packet Co. vs. Keokuk, 95 U. S., 81.
Supervisors vs. Stanley, 105 U. S., 305 and 313.
Neal vs. The Alameda, 31 Fed., 366.

"A legislative Act may be entirely valid as to some classes of cases and clearly void as to others. A general law for the punishment of offenses, which should endeavor to reach, by its retroactive operation, acts before committed, as well as to prescribe a rule of conduct for the citizen in the future, would be void so far as it was retrospective; but such invalidity would not affect the operation of the law in regard to the cases which were within the legislative control. A law might be void as violating the obligation of existing contracts, but valid as to all contracts which should be entered into subsequent to its passage, and which, therefore, would have no legal force except such as the law itself would allow. In any such case the unconstitutional law must operate as far as it can, and it will not be held invalid on the objection of a party whose interests are not affected by it in a manner which the Constitution forbids. If there are any exceptions to this rule, they must be of cases only where it is evident, from a contemplation of the statute and of the purpose to be accomplished by it, that it would not have been passed at all, except as an entirety, and that the general purpose of the Legislature will be defeated if it shall be held valid as to some cases and void as to others."

Cooley's Constitutional Limitations, 215, 216.

Can any one believe that Congress would not have extended the provisions of the Limited Liability law, as it has done by Section 4 of the Act of June 19, 1886, if that body believed that its provisions could not be extended to vessels navigating waters entirely within the limits of one State and on which no interstate or foreign commerce can be conducted? No case cited on this point by counsel for petitioners sustains his position. U. S. vs. Reese, 92 U. S., 214, and The Trade Mark Cases, 100 U. S., 98, construe penal statutes, where a different rule of construction applies.

See

In Allen vs. La., on which counsel for petitioners greatly relies, it is held that if the provisions of a statute which are unconstitutional be so connected with its general scope that should they be stricken out effect cannot be given to the legislative intent, the other provisions must fall with them. That is undoubtedly true, but we fail to perceive its applicability to this case.

Leloup vs. Port of Mobile was a tax upon the franchise, the right to do business, of a telegraph company which was engaged in interstate as well as State business, and such a tax was held to be unconstitutional. Here can be seen at a glance there could be no separation of the business done by the company; it was required to take out a license before doing business, so that the tax was upon the business as a whole. But in the Ratterman case and in the case of Western Union Tel. Co. vs. Ala., already cited, there could be a separation of the subjects of taxation. The Virginia Coupon Cases are cited by counsel for the petitioners. Here certain Acts of the General Assembly of the State of Virginia were declared unconstitutional and void throughout their whole length, because the main object of the Acts was to impair the obligation of a contract, and that vice pervaded them throughout and in all their provisions. Counsel for petitioners contends that the cases on which we rely on this point are not applicable, because they construe State statutes enacted concerning subjects over which State Legislatures have general powers, while in the case at bar we are considering an Act passed by Congress, whose powers are limited and flow from express grants of the Constitution. The answer to this is, that, as we have already shown, ships or vessels of the United States are the creatures of Congressional legislation, and over them the power of Congress is as unlimited as are the powers of taxation possessed by a State. This fact also distinguishes the case at bar from the Trade Mark Cases and the case of U. S. vs. Reese; in the Trade Mark Cases, Congress undertook to legislate concerning trade marks, and in the Reese case concerning voting, over which Congress has no general power, but Congress has a general power to legislate concerning vessels, though there may be vessels not within the scope of Congressional regulation.

In conclusion, we may safely fall back on Judge Cooley's statement, that when a statute is applicable to several classes as to some of which it may be constitutional and as to others not, it must be upheld, except where from the general contemplation of the statute and of the purpose to be accomplished by it, it is evident that it would not have been passed at all, except as an entirety, and that the *general purpose* of the Legislature will be defeated if it shall be held valid as to some classes and void as to others. Is this Court prepared to say that the fourth section of the Act of June 19, 1886, falls within this exception?

R. G. Erwin
Counsel for Respondent

In the Supreme Court of the United States.

EX PARTE.

GARNETT, STUBBS & CO. *et al.*, IN CASE OF JOHN LAWTON,

OWNER OF THE STEAMER KATIE,

vs.

THE STEAMER KATIE, ETC., AND GARNETT, STUBBS & CO. *et al.*

Libel in the United States District Court for the Eastern Division of the Southern District of Georgia.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

In response to the rule nisi issued by your Honorable Court, directing that I, as District Judge of the United States for the Eastern Division, Southern District of Georgia, show cause before your Honorable Court on the 2d day of March, 1891, why the writ of Prohibition should not issue, as prayed for in the proceeding above stated, I have the honor to respectfully call your attention,

1st. To the reasons which impelled the Court, upon consideration thereof, to overrule the demurrer of respondents to the libel in said case, of file in the office of the Clerk in the District Court here, a copy of which is set out in the sixteen pages of printed matter hereto attached, the same being the decision of the Court upon the questions involved.

2d. To the judgment and order of the Court overruling the demurrer and motion to dismiss, and directing that the case proceed; a certified copy of which is also hereto attached.

Intending these papers to be a compliance with your order, so far as it is possible for me to comply, I have the honor to submit the cause for your consideration.

In witness of the foregoing, I hereunto set my hand and official signature, and direct the Clerk of the said District Court at Savannah, Georgia, to affix hereunto the seal of said Court.

EMORY SPEER,
U. S. Judge.

I, H. H. King, Clerk of the District Court of the United States for the Southern District of Georgia, hereby certify that the above is the signature of Hon. Emory Speer, Judge of the District Court of the United States for the Southern District of Georgia.

{ Seal of U. S. Dist. Ct. So. Dist. Ga. }

Witness my hand and official seal at Savannah, Georgia, this 16th day of February, 1891.

H. H. KING,
Clerk.

THE KATIE.

LAWTON *v.* COMER *et al.*

(*District Court, S. D. Georgia, E. D.* November 12, 1889.)

1. SHIPPING—LIMITED LIABILITY ACT—CONSTITUTIONAL LAW—INTERNAL COMMERCE.
   The act of June 19, 1886, extending the benefits of limited liability legislation to vessels engaged in inland navigation, having been assailed for alleged unconstitutionality, *held*, that the act is valid, in view of the power of Congress to regulate commerce, because the law amended, excepted from its operation inland navigation only, and not internal commerce, as insisted.
2. SAME.
   The amendment extended the operation of the law, not to internal commerce, but to inland navigation. So much for the direct purpose of the act.
3. SAME.
   If internal commerce is affected, it is incidentally merely. The purpose of the legislature being legitimate, and warranted by the constitution, it is wholly immaterial to the consideration of the validity of its action that somewhere it has a casual or contingent effect upon the domain of State legislation.
4. SAME.
   Even though the subjects of this extended limitation of liability, or the territory in which it is effective, are partially within the region of State control, yet, where the subjects are separable, and are partly under the national control, the act will be sustained by the courts wherever the power of Congress extends, and as to all those objects to which it attaches; and this rule is easily applicable in this case.
5. SAME—APPLICATION TO SAVANNAH RIVER.
   As to the Savannah river, it is a public navigable stream. The voyages of the Katie and her cargo are interstate in character, and the jurisdiction of Congress is undoubted.
6. SAME—CONGRESSIONAL POWERS—ADMIRALTY.
   The act is warranted also by the admiralty clause of the constitution, and the power of Congress to modify by statute the application of admiralty doctrines.
7. SAME.
   The entire purpose of the limited liability enactments was to encourage investments in shipping, and they may be extended wherever the admiralty courts of the United States have jurisdiction.

(*Syllabus by the Court.*)

In Admiralty.

Chisholm & Erwin, for libelant.
Denmark, Adams & Adams, for respondents.

SPEER, J. This is a libel brought under the provisions of section 4 of the act of Congress of June 19, 1886, (24 St. at Large, 80) Its purpose is to limit the liability of the owner of the steamer Katie for losses to her cargo occasioned by fire. The libelant (the owner) alleges that he is not liable at all for the damage which occurred to the cargo, but, if liable, to limit the liability, he prays to be accorded the benefit of the act referred to. The allegations of the libel are that the Katie was on her trip when the fire occurred. At that time, and for 20 years prior thereto, she had been engaged in transporting freight and passengers from and to the ports of Savannah and Augusta, and intermediate landings on the Savannah river in the States of South Carolina and Georgia. She belonged to a line of carriers issuing through bills of lading to and from localities in Georgia, and to and from ports and places in the other States of the Union, and to and from foreign ports. The libel contains the usual averments that the damage was done without the privity of knowledge or the owner. It is admitted in the pleadings that a large portion of the cargo was laden at different points on the Georgia side of the river, and was consigned to merchants in Savannah, and that other portions, consigned in like manner, were received from the South Carolina landings.

The various owners of the cargo, as respondents, have interposed a demurrer and motion to dismiss the libel, upon the ground that the fourth section of the act of Congress of June 19, 1886, is, as they insist, unconstitutional and void; and since the owners of vessels used in rivers or inland navigation were expressly excluded from the right to limit their liability under previous acts of Congress (sections 4283–4289, Rev. St.) it follows, they contend, that no relief can be granted under the allegations and prayers of the libel. The gist of the contention of proctors for respondents may be stated as follows: (1) They insist that sections 4 of act of June 19, 1886, extending the right to limit liability to the owners of "all vessels used on lakes or rivers, or in inland navigation, including canal-boats, barges, and lighters," was intended to affect, and *ex vi termini* does affect, vessels used in the purely internal commerce of a State; that this purpose of the act is expressed in unequivocal words. (2) Even though it be conceded, they urge, that Congress might have provided a measure of relief for owners of a vessel whose interstate traffic relations were corresponding to those of the Katie, without encroaching upon the domain of internal commerce, the court, they insist, may not restrict the application of this act so as to give it partial effect simply because the facts here are appropriate to national control, the statute itself in plain and unambiguous terms, exceeding they contend the limitations of the commerce clause of the constitution. This clause, they maintain so far from authorizing, actually prohibits legislation by Congress, which will affect the internal commerce between citizens of the same State, and since the terms of the act in question comprehend alike constitutional and unconstitutional topics, the entire section of the amended statute must, they argue, be held inoperate and void; citing *U. S.* v. *Reese*, 92 U. S. 220; *Trade-Mark Cases*, 100 U. S. 82; *Virginia Coupon Cases*, 114 U. S. 304, 5 Sup. Ct. Rep. 903; *Leloup* v. *Port of Mobile*, 127 U. S. 647, 8 Sup. Ct. Rep. 1380; *Spraigue* v. *Thompson*, 118 U. S. 90, 6 Sup. Ct. Rep. 988;

Allen v. *Louisiana*, 103 U. S. 80; *State Tonnage Tax Cases*, 12 Wall. 219. (3) While respondents concede the power of Congress to provide, by inspection, license regulations, etc., for the safety of vessels engaged in internal traffic, they insist there is a distinction between inspection and other laws intended to control the character of machinery, equipment, and the like in vessels plying upon the navigable waters of the United States, and laws intended to enlarge or to limit the contract rights and liabilities of persons concerned with the same vessels; that the legislation, for the one purpose, may be warranted by the commerce clause of the constitution, but for the purpose of affecting the rights of persons contracting with vessels engaged exclusively in the internal traffic of a State the enactments of Congress are nugatory; citing *The Daniel Ball*, 10 Wall. 557; *Ex parte Boyer*, 109 U. S 631, 3 Sup. Ct. Rep. 434; *Hatch* v. *Iron Bridge Co.*, 6 Fed. Rep. 329; *Yale Lock Manuf'g Co.* v. *James*, 20 Fed. Rep. 903; *Sands* v. *Improvement Co.*, 123 U. S. 295, 8 Sup. Ct Rep. 113. (4) They further insist that the legislation embodied in the act of March 3, 1851, and in sections 42-83–4289 of the Revised Statutes, was construed by the Supreme Court of the United States, and by other Federal courts, to be authorized by the commerce clause of the constitution; citing *Moore* v. *Transportation Co*, 24 How. 37; *Lord* v. *Steam-Ship Co.*, 102 U. S 541; *The Genesee Chief*, 12 How. 443; *The Bright Star*, 1 Woolw. 274; *The Mamie*, 5 Fed. Rep. 819; *The War Eagle*, 6 Biss 366. They argue that the enactments are otherwise without constitutional warrant or validity. (5) They assert that the provision of the constitution, "the judicial power shall extend to all cases of admiralty and maritime jurisdiction," has relation merely to the law of the forum, and gives no authority to Congress to regulate the property rights and liabilities of parties litigant. Moreover, even though it be conceded they say that the admiralty clause confers upon Congress the power to legislate as to all topics which are properly within the admiralty jurisdiction, nevertheless the act of June 19, 1886, is broader even than that extensive domain, for it applies to all inland waters, while the admiralty jurisdiction is limited to those waters which, by themselves, or their connections with others, form a continuous channel for commerce among the States or with foreign countries; citing *The Daniel Ball*, 10 Wall. 557; *The Genesee Chief*, 12 How. 443; *Allen* v. *Newberry*, 21 How. 244; *The Hine*, 4 Wall. 569; *The Belfast*, 7 Wall. 624; *The St. Lawrence*, 1 Black 527

Proctors for respondents instance rivers and inland waters in the States which are not included in the navigable waters of the United States; and they cite *Veazie* v. *Moor*, 14 How. 568; *The Montello*, 11 Wall. 411; *Sands* v. *Improvement Co.*, 123 U. S. 295, 8 Sup. Ct. Rep. 113. By all of this reasoning they reach with great apparent confidence the conclusion that the act of June 19, 1886, has no foundation upon the admiralty clause, and none upon the commerce clause, of the constitution, and must therefore be wholly disregarded, and as a consequence, that the libel must be dismissed.

It is not difficult, it would seem, for the observing mind, trained in the philosophy and history of our law, to appreciate the interesting considerations of legal thought suggested by the pending inquiry and the gigantic magnitude of the values which its ultimate adjudication may affect. Should the propositions of the respondents be deemed finally controlling, this would afford the twenty-first instance when an act of Congress was decisively adjudged unconstitutional. When it is

considered that this record of legislative conscientiousness and judicial conservatism embraces a period of ninety-nine years, the inchoate and formative period of a vast and novel experiment in the science of government, the exciting exigencies of foreign wars, the corroding inflammation of civil strife, the expansion of three million of primitive people, employed mainly in the simple and unproductive occupations of frontiersmen, to sixty millions whose ventures in the production of national wealth are as diverse in character as they are intrepid in enterprise and affluent in results; when also, the mighty volume of decided cases, involving the application or interpretation of the constitution, is considered,—it must be granted that the national legislation is with substantial uniformity stable and valid, and that the occaions when it may be held by the courts invalid are rarely afforded. It is equally obvious that the courts will decline to adjudge a statute to be in conflict with the constitution, unless the reasons therefor are of that convincing and imperative character which at once clear the mind of doubt and constrain the inevitable decision.

The attempted impeachment of the fourth section of the act of June 19, 1886, extending the privilege of limited responsibility to "all vessels used on lakes or rivers, or in inland navigation, including canal-boats, barges, and lighters," is evolved mainly from this premise of respondents' proctors:

"It seems to us clear that section 4 of the act (save in the use of the words 'sea-going vessels') directly collides with the constitution, and that its expressed purpose was to do the very thing which Congress is prevented from doing. The law, as it stood, excepted from the operation the owners of vessels engaged in internal commerce. The design of the act of 1886 was so to change the excepting clause as to apply the law to such owners and commerce. Take the law as it was in connection with this fourth section, and it will then appear that the purpose was to do an unconstitutional thing; that is to say, the very legislation proposed was unconstitutional if our contention be correct as to the power of Congress."

In this connection it may be well to state that elsewhere in the copious and valuable brief from which the quotation is taken an important axiom of constitutional interpretation is frankly set forth, viz., "that a court ought not to declare a law unconstitutional unless the fatal infirmity is made clearly to appear,—to appear, beyond any reasonable doubt." With this cardinal rule in mind, let us attempt to ascertain if there is not at least a reasonable doubt as to the existence of error or misapprehension in the proposition of the proctor, above set forth. Is it true that Congress has "expressed the purpose" by this amendment to take control of the internal commerce of the States? Did the law, before the amendment, except from its operation the owners of vessels engaged in internal commerce? Does the amendment assailed apply the law to such owners and commerce? Is it true that the "purpose of Congress was to do an unconstitutional thing?" It does not appear that the law of limited liability before the 19th of June, 1886, excepted from its operation the owners of vessels engaged in internal commerce. The language of the exception was applicable to the owners of craft of certain description plying upon certain waters. It is wholly silent as to the character or kind of commerce for which the vessels or the water routes were utilized. This is plainly apparent from the language of the proviso before the amendment was adopted:

"This act shall not apply to the owner or owners of any canal-boat, barge, or lighter, or to any vessels of any description whatsoever, used in rivers or inland navigation."

It should not be difficult to understand that this is widely variant from the proposition of respondents. The excepting clause, if their construction had been adopted, would probably have read:

"This act shall not apply to the owners of any vessel, etc., used in purely internal commerce."

There is, or may be, a vast distinction in the lading, or contracts of a vessel used in inland navigation, and one used for internal commerce. A vessel may be used for internal commerce and never traverse inland waters, or may ply the waters of a lake embosomed in the central territory of a State, and be wholly engaged in interstate commerce. Then it is not true that the law, before the amendment, excepted from its operation the owners of vessels engaged in internal commerce, but simply those whose vessels were used in rivers or inland navigation. Again, does the amendment to the limited responsibility law, assailed by the respondents, apply to the "owners of vessels engaged in internal commerce?" In the opinion of the court, very clearly not. It has no syllable with reference to internal commerce. It "shall apply also to all vessels used on lakes or rivers, or in inland navigation, including canal-boats, barges, and lighters." Congress, in the amendment as in the excepting clause of the act of 1851, *supra*, dealt entirely with classes of vessels navigating inland waters and lakes, and gave no attention to cargoes or shipping contracts. It did not deal with commerce, but with shipping. As we have before seen, there is no essential identity of topic in a vessel and the character of the commerce in which it is engaged. By a parity of reasoning it follows that Congress has not, by this extension of the limited responsibility privilege, expressed the purpose to take control of internal commerce, nor, so far as it has been made to appear, was it its purpose to do an unconstitutional thing. These conclusions seem to be clearly inferable from the plain and unambiguous words of the clauses which constituted the old law and the remedial statute which, as we will presently see, is but an encouragement to important classes of shipping in which the wealth of the country is largely invested. But if the language of the sections quoted was equivocal, there would even then be no difficulty in tracing to its constitutional source the current of this legislation, which has revived the drooping but vital growth of the country's maritime interests. It is well to remember that it is an elementary principle of construction, not only that the scope of a legislative enactment may be modified by the purpose expressed in the title, but that the intention of the legislature is often gathered from a view of the whole, and every part, of continuous legislation on the same general topic. 1 Kent, Comm. 461, 462. Upon consideration of the several enactments on the subject of limiting responsibility of the owners of shipping, it is not possible to discover any purpose of the national legislation to encroach upon the conceded rights of the States as to internal commerce. It may be, and is, no doubt, true that much of this legislation does incidentally affect rights growing out of internal commerce. That, however, is a necessary result, flowing from the variety and extent of the influence, exerted by every

act of Congress of general operation, howsoever undoubted its constitutionalty. An illustration of this may be found in the laws relating to internal taxation. Who may say these do not affect internal commerce? and yet the power of Congress is conceded. In the amplitude and diversity of the occupations and enterprises of our countrymen many results flow from congressional action which, if designed as a result of direct legislation, would be held unwarranted. It is enough to say of a law that its purpose, object, and main results are legitimate, and the law of limited responsibility has been often so adjudged. *Norwich Co.* v. *Wright*, 13 Wall. 109–128. The act of March 3, 1851, was entitled "An act to limit the liability of ship-owners, and for other purposes." Its provisions applicable to the questions at bar, embodied in sections 4283–4289, Rev. St., are as follows:

"The liability of the owner of any vessel for any embezzlement, loss or destruction, by any person, of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing lost, damage or forfeiture done, occasioned or incurred without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending." Section 4283, Rev. St. "The provisions of [this title, the seven preceding sections,] relating to the limitation of the liability of the owners of vessels, shall not apply to the owners of any canal-boat, barge, or lighter, or to any vessel of any description whatsoever, used in rivers or inland navigation." Section 4289, Rev. St.

The legislation upon this subject, next succeeding the act of 1851, is found in the act of June 26, 1884, (23 St. at Large, 53.) This, it is important to observe, is entitled "An act to remove certain burdens on the American merchant marine, and encourage the American foreign carrying trade, and for other purposes." The eighteenth section of this act is as follows:

"That the individual liability of a ship-owner shall be limited to the proportion of any or all debts or liabilities that his individual share of the vessel bears to the whole, and the aggregate liabilities of all the owners of a vessel, on account of the same, shall not exceed the value of such vessel and freight pending: provided, that this provision shall not affect the liability of any owner incurred previous to the passage of this act, nor prevent any claimant from joining all the owners in one action, nor shall the same apply to wages due to persons employed by said ship-owners."

We thus perceive that the title indicates what the body of the act makes clear, viz., that it was intended to encourage, and therefore to foster, the American merchant marine and the American foreign carrying trade. Its chief modification of the existing law was an enlargement of the privileges of exemption. It will be readily observed that it was the consistent legislative purpose to broaden the privileges of the owners of American craft upon the high seas. The enactments it seems were found advantageous also, as they were followed very soon afterwards by the act of June 19, 1886, (24 St. at Large, 79,) which is entitled "An act to abolish certain fees for official services to American vessels, and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes." The fourth section of this act extends previous enactments relating to limitations of liability to "all sea-going vessels," and here the respondents insist the national legislature exhausted its jurisdiction.

But it was not deemed enough to accord these privileges to sea-going vessels. A vast and rapidly augmenting fleet of American shipping, embracing every type of vessel, from the clumsy sailing craft of the last century, to the latest achievements in naval architecture, whose twin screws and triple expansion engines drive them with incredible swiftness over the teeming waters of the Great Lakes, were wisely esteemed by Congress to merit the aid and encouragement of the legislation which had been so effective with sea-going shipping. Nor was this all. It had been found that the vital necessity for cheap transportation for the natural and manufactured productions of the country, often denied in greater or less measure, by railway combinations, had been accomplished by a return to the slower, but cheaper methods of water carriage. Rivers, canals, and inland lakes, by themselves or their connections, in many instances afford the most important channels for the ebbing and flowing tide of interstate and foreign commerce. In the case of *The Daniel Ball*, 10 Wall. 557, where the recovery of a penalty under the act of Congress for failure to obtain a license to transport merchandise and passengers upon the bays, lakes, rivers, or other navigable waters of the United States was resisted upon the ground that the steamer navigating the Grand river, in the State of Michigan, was not engaged in interstate commerce, and for this reason it was insisted Congress had no control over her, the Supreme Court make very pertinent declarations. They decided that the Grand river was a navigable stream. They hold that rivers "are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are, or may be, conducted in the customary modes of trade and travel on water, and they constitute navigable waters of the United States, within the meaning of the acts of Congress, in contradistinction from the navigable waters of the States, when they form, in their ordinary condition, by themselves, or by uniting with other waters, a continuous highway, over which commerce is, or may be, carried on with other States or foreign countries, in the customary modes in which such commerce is conducted by water." 10 Wall. 563. This test was applied to Grand river, and the conclusion was reached that it was a navigable stream, and the court adds:

"And by its junction with the lake it forms a continued highway for commerce, both with other States and with foreign countries, and is thus brought under the direct control of Congress."

The court continues:

"That power [the power to regulate commerce] authorizes all appropriate legislation for the protection or advancement of either interstate or foreign commerce, and, for that purpose, such legislation as will insure the convenient and safe navigation of all the navigable waters of the United States, whether that legislation consists in requiring the removal of obstructions to their use, in prescribing the form and size of the vessels employed upon them, or in subjecting the vessels to inspection and license, in order to insure their proper construction and equipment. 'The power to regulate commerce,' this court said in *Gilman* v. *Philadelphia*, 3 Wall. 724, 'comprehends the control for that purpose, and to the extent necessary, of all navigable waters of the United States which are accessible from a State other than those in which they lie. For this purpose they are the public property of the nation, and subject to all the requisite legislation of Congress.' But it is contended that

the steamer Daniel Ball was only engaged in the internal commerce of the the State of Michigan, and was not, therefore, required to be inspected or licensed, even if it be conceded that Grand river is a navigable water of the United States; and this brings us to the consideration of the second question presented. There is undoubtedly an internal commerce which is subject to the control of the States. The power delegated to Congress is limited to commerce 'among the several States,' with foreign nations and with the Indian tribes. This limitation necessarily excludes from Federal control all commerce not thus designated, and of course that commerce which is carried on entirely within the limits of a State, and does not extend to or affect other States. In this case it is admitted that the steamer was engaged in shipping, and transporting down Grand river, goods destined and marked for other States than Michigan, and in receiving, and transporting up the river, goods brought within the State from without its limits; but inasmuch as her agency in the transportation was entirely within the limits of the State, and she did not run in connection with, or in continuation of, any line of vessels or railway leading to other States, it is contended that she was engaged entirely in domestic commerce. But this conclusion does not follow. So far as she was employed in transporting goods destined for other States, or goods brought from without the limits of Michigan, and destined to places within that State, she was engaged in commerce between the States; and, however limited that commerce may have been, she was, so far as it went, subject to the legislation of Congress. She was employed as an instrument of that commerce: for, whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State, and some acting through two or more States, does in no respect affect the character of the transaction. To the extent in which each agency acts in that transportation, it is subject to the regulation of Congress. It is said that, if the position here asserted be sustained, there is no such thing as the domestic trade of a State; that Congress may take the entire control of the commerce of the country, and extend its regulations to the railroads within a State on which grain or fruit is transported to a distant market. We answer that the present case relates to transportation on the navigable waters of the United States, and we are not called upon to express an opinion upon the power of Congress over interstate commerce when carried on by land transportation. And we answer, further, that we are unable to draw any clear and distinct line between the authority of Congress to regulate an agency employed in commerce between the States when that agency extends through two or more States, and when it is confined in its action entirely within the limits of a single State. If its authority does not extend to an agency in such commerce when that agency is confined within the limits of a State, its entire authority over interstate commerce may be defeated. Several agencies combining, each taking up the commodity transported at the boundary line at one end of a State, and leaving it at the boundary line at the other end, the Federal jurisdiction would be entirely ousted, and the constitutional provision would become a dead letter."

See, also, *The Montello*, 11 Wall. 411, 20 Wall. 430; *Ex parte Boyer*, 109 U. S., 629, 3 Sup. Ct. Rep. 434. In the case last cited the waterway upon which the collision occurred was actually the property of the state of Illinois, and was wholly artificial, and was wholly within its territorial boundaries. The court says, through Mr. Justice Blatchford:

"Within the principles laid down by this court in the cases of *The Daniel Ball*, 10 Wall. 557, and *The Montello*, 20 Wall, 430, which extended the salutary views of admiralty jurisdiction applied in *The Genesee Chief*, 12 How. 443, *The Hine* v. *Trevor*, 4 Wall. 555, and *The Eagle*, 8 Wall. 15, we have no doubt of the jurisdiction of the district court in this case." "Navigable water, situated as this canal is, used for the purposes for which it is used, a highway for commerce between ports and places in different states, carried on by vessels such as those in question here, is public water of the United States."

It is true that this case considers and decides a question of admiralty jurisdiction; but the canal, although wholly artificial, and wholly within the body of the state, is declared public water, for the reason that it is a conduit for interstate commerce. In concluding the opinion, Mr. Justice Blatchford observes:

"This case does not raise the question whether the admiralty jurisdiction of the district court extends to waters wholly within the body of a state, and from which vessels cannot so pass as to carry on commerce between places in such state and places in another state or in a foreign country, and no opinion is intended to be intimated as to jurisdiction in such a case."

The case was decided in January, 1884. In December, 1870, in the case of *The Montello*,—a proceeding to recover a penalty under a statute operative upon the "bays, lakes, rivers, or other navigable waters of the United States,"—Mr. Justice Field, for the court, declares that the stream "can only be deemed a navigable water of the United States when it forms by itself, or by its connection with other waters, such a highway." "If, however," the learned justice continues, "the river is not of itself a highway for commerce with other states or foreign countries, or does not form such a highway by its connection with other waters, and is only navigable between different places within the state, then it is not a navigable water of the United States, but only a navigable water of the state, and the acts of congress * * * for the enrollment and license of vessels have no application. Those acts only require such enrollment and license for vessels employed upon the navigable waters of the United States." It will be observed that this was the construction of a penal statute, and its application under the admiralty power. But, for the regulation of interstate commerce, as we shall presently see, congress has enacted legislation with reference to the commerce upon water routes, whether they form by connection with other waters or with railways, a highway for continuous carriage or shipment of passengers or property. The power of congress for this purpose is, we believe, generally conceded. If, therefore, the navigable waters of a state wholly within the state, and with no exterior water connection, are yet utilized under "common control, management, or arrangement," in connection with railroads, for "continuous carriage," —in other words, for interstate commerce,—for the purposes of such commerce,—they would become public waters of the United States, and subject to congressional control under the commerce clause (paragraph 3, § 8, art. 1) of the constitution, if not under the admiralty clause. See act of February 4, 1887, entitled "An act to regulate commerce," (24 St. at Large, 379.)

But if it be true, as contended, that the terms of the act of June 19, 1886, are so broad that they affect the navigable waters of a state upon which there are vessels wholly engaged in internal commerce, must the act be held a nullity for that reason? From the fact that the indefatigable proctors for respondents have referred to the Kissimee, in Florida, and the Jordan, in Utah, to illustrate their argument, it is perhaps fairly inferable that such streams and lakes are very rare. It is probable, also, that the commerce which they convey is comparatively unimportant. Now, is it not the duty of the court to sustain the act under consideration if it appears that its application to the navigable inland waters of the United States, and to the great body of commerce, is valid and appropriate, even though it may affect, upon occasion, commerce wholly

within a state? Concede that its language is susceptible of the meaning suggested by the respondents, it is nevertheless clearly warranted, and operative, as to all the important inland navigation of the country and the Great Lakes, and as to a mighty volume of commercial transactions. It has long been settled that statutes, constitutional in part only, will be upheld so far as they are not in conflict with the constitution, provided the allowed and prohibited parts are separable. *Packet Co.* v. *Keokuk*, 95 U. S. 80. A case of controlling authority upon the proposition that the statute may be valid as to one class of commerce, even though invalid as to another, is *Ratterman* v. *Telegraph Co.*, 127 U. S. 411–428, 8 Sup. Ct. Rep 1127. There a single tax was assessed by the State of Ohio upon the receipts of the telegraph company. These were derived as well from interstate as from internal commerce. The items of the income account were of course capable of separation, but they were returned and assessed in gross, and without separation or apportionment. A bill was presented to the judge of the circuit court of the United States, sitting in chancery, by the telegraph company, with averments that the tax was illegal and void, and in conflict with the constitution of the United States, for the alleged reason that the State was seeking by the act to impose a tax upon gross receipts principally accumulated from interstate telegraphic messages. The prayers were that the defendant, to-wit, the treasurer, may be compelled to accept that portion of the tax lawfully due the State and country, and that he may be enjoined from levying or collecting the balance of the assessment. To the bill a general demurrer was filed. The circuit court, after argument, upon an agreed submission of facts, which was in the main but a statement of the separate amounts received from business within the State, and from business between points in Ohio and in other States, held that the tax by the State, so far as apportioned to receipts derived from interstate communication, was unconstitutional and void, but, as apportioned to messages within the State, it was valid. The case reached the supreme court by a certificate of difference of opinion between the circuit and the district judge; and Mr. Justice Miller, for the court, presenting the unanimous opinion with the characteristic vigor and clearness of his judicial deliverances, has with precision, and we think with conclusiveness, defined the rule for our guidance. After stating the question certified, and observing that the agreement of parties had avoided the point that the tax was not separable, the learned justice decisively states:

"Nor do we believe, if there were allegations, either in the bill or answer, setting up that part of the tax was from interstate commerce, and part from commerce wholly within the State, that there would have been any difficulty in securing the evidence of the amount of receipts chargeable to these separate classes of telegrams by means of the appointment of a referee or master to inquire into that fact, and make report to the court. Neither are we of opinion that there is any real question, under the decisions of this court, in regard to holding that, so far as this tax was levied upon receipts properly appurtenant to interstate commerce, it was void, and that, so far as it was only upon commerce wholly within the State, it was valid."

How opposite is this language to the facts before the court! Here the books and bills of lading of the steamer would show every fact essential to the apportionment of the cargo into classes of internal and interstate traffic and freight. But even more pertinent is the next succeeding remark of the learned justice: "This precise question was ad-

judged in the *Case of State Freight Tax.* 15 Wall. 232." There a statutory tax of Pennsylvania of two cents for one class, three cents for another, and five cents for another, imposed upon every ton of freight transported by any railroad or canal of that State, was resisted by the Reading Railroad Company on the ground that it was levied on interstate commerce. The returns of the railroad company to the accounting officers stated separately the amount of freight carried wholly within the State, and the amount brought into or carried out of the State. The court held "that the tax upon the former class * * * was valid under the law of Pennsylvania, by which it was imposed; but that the latter classes, being commerce among the States, were not subject to such taxation." These cases are very satisfactory.

It is also true that apportionment and separation of subjects under control of the State, and without such control, will apply to the transportation routes, as well as to the freight transported or messages forwarded. In the case of *Telegraph Co.* v. *Massachusetts*, 125 U. S. 530, 8 Sup. Ct. Rep. 961, where a tax by that State, estimated against the company upon the length of its lines within the State, as proportioned to their length elsewhere, it was held that since lines along post routes and across navigable waters of the United States were not subject to taxation; and since, in the State, 233,455 miles of the defendant's lines were thus exempted, there remained only 49,850 miles not exempt; and upon this the company offered to pay the proportion of the tax assessed against it according to mileage by the State authorities. The remaining assessment was enjoined. "We refer to this now," continues this valuable opinion, "only for the purpose of showing how easily the question of taxation which is forbidden by the constitution may be separated from that which is permissible in this class of cases." If the subjects of taxation are so readily classified to mark the separate domain of federal and State taxing power, how entirely justifiable will be the same process when necessary to maintain the validity of national legislation! This, as we have seen, is the unquestionable duty of the court. *Vide*, also, *Tiernan* v. *Rinker*, 102 U. S. 123; *Steam-Ship Co.* v *Pennsylvania*, 1 Int. St. Com. R. 311; *Telegraph Co.* v. *Pennsylvania*, 128 U. S. 39, 9 Sup. Ct. Rep. 6. A case very interesting and very instructive as to this important topic is *Steam-Ship Co.* v. *Pennsylvania*, 122 U. S. 326–345, 7 Sup. Ct. Rep. 1118. The opinion of the court, rendered by Mr. Justice Bradley, comprehends an attractive analysis of the more pertinent decisions upon this rule with copious references to many others.

It will be observed that we have heretofore considered the argument submitted by respondents' proctors as if a portion of the cargo of the Katie was shipped to be transported wholly within the State. It is true, however, as we shall presently see, that all of it is properly to be regarded as interstate in its character. It is true, also, that the Katie was engaged, in the strictest sense, in interstate and foreign commerce, and that the Savannah river between Augusta and Savannah is, as clearly, as the Mississippi between St. Louis and New Orleans, a navigable river of the United States. We extract the following from the valuable and elaborate brief of Mr. Robert Erwin, the proctor for libelant:

"The State of Georgia is bounded on the east by a line running from the sea, or the mouth of the river Savannah, along the stream thereof, to the fork or confluence made by the rivers Keowee and Tugalo. Code Ga. § 15. It is proper to state, however, that there has been much discussion as to whether

the State of Georgia extends only to the thread of the stream or to the Carolina shore. However that may be, the second article adopted by the convention of Beaufort, which settled the boundary between Georgia and South Carolina, provided that the navigable portion of the Savannah river should be henceforth equally free to the citizens of both States, and exempt from all duties, toll, hindrance, interruption, and molestation whatsoever attempted to be enforced by one State on the citizens of another. See Hotchkiss, St. Law Ga. 916. And as the steam-boat Katie, on every trip, touched at landings on both shores of the river,—that is, in South Carolina and in Georgia,—there can be no doubt that she was engaged in interstate commerce."

In *Cotton Exchange* v. *Railroad Co.*, 2 Int. Com R. 375–388, we find it announced that commerce between points in the same State, but which passes through another State, is regarded and treated as interstate commerce. Mr. Commissioner Morrison, stating the conclusion of the commission, on page 386, uses the language following:

"While passing through Mississippi, after passing from Louisiana, this commerce is interstate, and subject alone to interstate regulations. It is not subject at any place between Shreveport and New Orleans to regulation by both the State and the Congress. It passes by continuous carriage from Louisiana to and through the State of Mississippi. It is not transportation 'wholly within the State.' It is subject to regulation by the provision of the act to regulate commerce, and the commission has jurisdiction to reserve the rates, where the parties interested in them are before it."

This report is strongly advisory, and the statement quoted seems otherwise altogether justifiable. Then the Katie was in all respects engaged in interstate commerce. See, also, *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196, 5 Sup. Ct. Rep. 826; *The Daniel Ball*, *supra*.

To summarize our conclusions upon this important and interesting topic, we are of opinion that the act of June 19, 1886, is valid, in view of the power of Congress to regulate commerce: (1) Because the law, amended, excepted from its operation inland navigation only, and not internal commerce, as insisted. (2) The amendment extended the operation of the law, not to internal commerce, but to inland navigation. So much for the direct purpose of the act. (3) If internal commerce is affected, it is incidentally merely; and the purpose of the legislature being legitimate, and warranted by the constitution, it is wholly immaterial to the consideration of its validity that somewhere it has a casual or contingent effect upon the domain of State legislation. (4) Even though the subjects of this extended liability, or the territory in which it is effective, are partially within the region of State control, yet, where they are separable, and are partly under the national control, the act will be sustained by the courts wherever the power of Congress extends, and as to all those objects to which it attaches; and this rule is easily applicable to the facts. (5) As to the Savannah river, it is a public navigable stream. The voyages of the Katie and her cargo are interstate in character, and the jurisdiction of Congress is undoubted.

It will be seen that the question presented as to the constitutionality of the clause extending the benefit and privilege of limited responsibility to the owners of vessels engaged in navigating the inland public waters of the United States has been heretofore considered solely with relation to the commercial power of Congress. But the commerce clause of the constitution is not the only title to the validity and effectiveness of the enactments. It is equally clear that the amendment is warranted by section 2, art. 3 of the constitution, which extends the

judicial power of the United States to all cases of admiralty and maritime jurisdiction. Since this demurrer was argued, the Supreme Court of the United States, in *Butler* v. *Steam-Ship Co.*, 130 U. S. 527–558, 9 Sup. Ct. Rep. 612, has settled with distinctness the following principles applicable to this discussion: The law of limited liability was enacted by Congress as part of the maritime law of the United States, and is co-extensive in its operation with the whole territorial domain of that law. (2) While the general maritime law, with slight modifications, is accepted as law in this country, it is subject, under the constitution, to such modifications as Congress may see fit to adopt. (3) The limited liability act applies to the case of a disaster happening within the technical limits of a county in a State, and to a case in which the liability itself arises from a law of the State. The case resulted from the well-known disaster to the City of Columbus near Gay Head, at the western extremity of Martha's Vineyard; and it was insisted by respondents to the libel to limit liability, filed by the steam-ship company, that the doctrine had no application to cases of personal injury and death, and none in the technical limits of a county in a State, nor to a cause of action created by State law. All of these propositions were negatived by the court. The case seems to have been argued with great care and elaboration; and the opinion, rendered by Mr. Justice BRADLEY, is most valuable. The learned justice declares that the purpose of the limited liability law is,—we may observe, not to affect internal commerce,—but for the encouragement of ship-building, and the employment of ships in commerce. He refers to the various attempts which have been made to narrow the operation of the statute. He cites the leading cases in which the beneficient object of the law has been set forth: *Norwich Co.* v. *Wright*, 13 Wall. 104; *Steam-Ship Co.* v. *Manufacturing Co.*, 109 U. S. 578, 3 Sup. Ct. Rep. 379, 617. "The law of limited liability," says the learned justice, "as we have frequently had occasion to assert, was enacted by Congress as a part of the maritime law of this country, and therefore it is co-extensive in its operation with the whole territorial domain of that law." *Norwich Co.* v. *Wright*, 13 Wall. 104–127; *The Lottawanna*, 21 Wall 558–577; *The Scotland*, 105 U. S. 24, 29–31; *Steam-Ship Co.* v. *Manufacturing Co.*, 109 U. S. 578–593, 3 Sup. Ct. Rep. 379, 617. In *The Lottawanna* we said:

"It cannot be supposed that the framers of the constitution contemplated that the law should forever remain unalterable. Congress undoubtedly has authority under the commercial power, if no other, to introduce such changes as are likely to be needed." Page 577.

Again, on page 575, speaking of the maritime jurisdiction referred to in the constitution, and the system of law to be administered thereby, it was said:

"The constitution must have referred to a system of law co-extensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states."

In *The Scotland* this language was used:

"But it is enough to say that the rule of limited responsibility is now our maritime rule. It is the rule by which, through the act of Congress, we have announced that we propose to administer justice in maritime cases." Page 31.

Again, in the same case, (page 29,) we said:

"But whilst the rule adopted by Congress is the same as the rule of the general maritime law, its efficacy as a rule depends upon the statute, and not upon any inherent force of the maritime law. As explained in *The Lottawanna*, the maritime law is only so far operative as law in any country as it is adopted by the laws and usages of that country; and this particular rule of the maritime law had never been adopted in this country until it was enacted by statute. Therefore, whilst it is now a part of our maritime law, it is nevertheless statute law."

And in *Steam-Ship Co.* v. *Manufacturing Co.* it was said:

"The rule of limited liability prescribed by the act of 1851 is nothing more than the old maritime rule administered in courts of admiralty in all countries except England from time immemorial; and, if this were not so, the subjected matter itself is one that belongs to the department of maritime law." 109 U. S. 593, 3 Sup. Ct. Rep. 389.

These quotations are believed to express the general, if not unanimous, views of the members of this court for nearly 20 years past, and they leave us in no doubt that while the general maritime law, with modifications, is accepted as law in this country, it is subject to such amendments as Congress may see fit to adopt. One of the modifications of the maritime law as received here was a rejection of the law of limited liability. We have rectified that. Congress has restored that article to our maritime Code. We cannot doubt its power to do this.

At this point it is material to observe that the exception to the act of 1851 denying the statute operation to inland waters was added in the Senate. It seems to have been suggested by an act of parliament in the reign of Geo. III. which provided that these privileges "should not extend to the owners of any lighter, barge, boat, or vessel of any burden or description whatsoever, used wholly on rivers or inland navigation, or vessel not duly registered according to law. Opinion of Judge DRUMMOND in *The War Eagle*, 6 Biss. 364. Surely parliament was not concerned with questions of interstate or internal commerce. To use the language of Mr. Justice BRADLEY above quoted, it was a modification of the maritime law. We have rectified that. In fact, our statute adopted the maritime law, as contradistinguished from the English statutes, with that exception, where they were followed. But in England as in this country the scope of this great privilege has been gradually but steadily extended. It was partially adopted by the act of 7 Geo. II. in 1734. It was enlarged by 26 Geo. III., 1786, and again by 53 Geo. III., 1813. In 1841, France took advanced action in behalf of the ship-owner. The act of 1851 was framed in the light thrown upon the subject by all of this European legislation, and by the writings of Grotius, (War and Peace, bk. 2, c. 11, § 13,) Valin, (*liber* 2, tit. 8,) Pardessus, (2 Droit Com. pt. 3, tit. 2, c. 3, § 2,) and many others, —renowned writers on maritime law. Who can doubt its wisdom or

its beneficence, when considered in the light of such experience and such authority? Its philosophy is eminently practical, and is well explained by Mr. Justice BRADLEY, in *Norwich Co.* v *Wright*, 13 Wall. 121:

"The great object of the law was to encourage ship-building, and to induce capitalists to invest money in this branch of industry. Unless they can be induced to do so, the shipping interests of the country must flag and decline. Those who are willing to manage and work ships are generally unable to build and fit them. They have plenty of hardiness and personal daring and enterprise, but they have little capital. On the other hand, those who have capital, and invest it in ships, incur a very large risk in exposing their property to the hazards of the sea, and to the management of sea-faring men, without making them liable for additional losses and damage to an indefinite amount. How many enterprises in mining, manufacturing and internal improvements would be utterly impracticable if capitalists were not encouraged to invest in them through corporate institutions, by which they are exempt from personal liability or from liability except to a limited extent! The public interests require the investment of capital in ship-building quite as much as in any of these enterprises."

Having rectified by the act of 1851 its omission to obtain the benefit of this law for the ship-owners who are our countrymen, Congress, finding that it was injudicious to exclude therefrom the interests engaged in inland navigation, rectified that mistaken exclusion by the act of June 19, 1886, now under consideration. Who may successfully dispute the wisdom of this legislation? Who may deny its absolute and vital importance to the shipping interests of the country upon those northern oceans of living water,—traversed by vast fleets of steamers and sailing vessels, annually discharging into the coffers of national and individual treasure, an opulence of wealth beyond the dreams of avarice? Is it possible to question the benefit of this law, to the traffic upon those mighty streams which, with their tributaries, vitalize the continent as the arteries the human body, or upon the innumerable water-courses of lesser volume, but the value of which the nation is beginning to appreciate, and for the improvement of which the public makes annual and liberal expenditures in order to advance the commerce, which is declared in argument here, to be wholly without national control?

After consideration in detail of the reasons urged against the validity of the act,—consideration had with the carefulness and attention demanded, not alone by the great moment of the inquiry, but also by the zeal and earnestness with which the supposed encroachment upon the rights of the State has been combatted,—we are thoroughly satisfied that the legislation is proper, as well to the commercial power of congress as to the admiralty jurisdiction of the courts, as modified by the statutes. It has afforded an additional illustration of the fortunate truth that the constitution of our country is never an obstacle to the practical and patriotic assertion of national control over subjects of national concern; but considered in sympathy with the broad and patriotic, yet cautious and conservative purposes of its framers, it furnishes an undoubted warrant for all legislation appropriate to our diverse system, and in consonance with the expension and progress of the country on the paths of civilization as they widen and extend. The demurrer will be overruled.

In the District Court of the United States for the Eastern Division of the Southern District of Georgia.

I, H. H. King, Clerk of the District Court of the United States for the Southern District of Georgis, do hereby certify that the foregoing sixteen printed pages is a true and correct copy of the opinion and decision of the Court in the case of John Lawton, libellant, against Garnett, Stubbs & Co., C. L. Montague & Co., Herron & Gaudry, John Flannery & Co., E. G. Cabaniss, surviving partners of Geo Walter & Co., Baldwin & Co., F. M. Farley, M. Y. & D. I. McIntyre, H. M. Comer & Co., and Warren & Axson, owners of cargo of steamboat Katie, now on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said District Court at Savannah, Georgia, this 16th day of February, 1891.

{Seal of U. S. Dist. Ct. So. Dist. Ga.}

H. H. KING,
Clerk.

JOHN LAWTON, OWNER OF STEAMER KATIE, *vs.* THE OWNERS OF THE CARGO OF THE STEAMER KATIE. } *Libel in Admiralty to Limit Liability.* } *Order Overruling Demurrer.*

The above stated case came on to be heard upon the demurrer of the defendants to the libel, and motion to dismiss the same because the fourth section of the Act of Congress, approved June 19, 1886, is alleged to be unconstitutional.

Whereupon it is considered, ordered and decreed by the Court that the said demurrer be overruled, that the motion be dismissed, and that the cause proceed.

In open Court, February 9, 1889.

EMORY SPEER,
U. S. Judge.

I, H. H. King, Clerk of the District Court of the United States for the Southern District of Georgia, do hereby certify that the above and foregoing is a true and correct copy of order overruling demurrer on file in my office.

Witness my hand and seal of District, at Savannah, this February 16, 1889.

[SEAL]

H. H. KING,
Clerk.